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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 223

~~THE UNITED STATES OF AMERICA~~, INTERSTATE
COMMERCE COMMISSION, AND THE PACIFIC ELECTRIC
RAILWAY COMPANY, APPELLANTS

vs.

RAILWAY LABOR EXECUTIVES ASSOCIATION AND
BROTHERHOOD OF RAILROAD TRAINMEN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

FILED JUNE 28, 1941

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OCTOBER TERM, 1941

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COMMERCE COMMISSION, AND THE PACIFIC ELECTRIC
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A [Caption omitted.]

1 In the United States District Court for the District
of Columbia

Civil Action No. 9011

RAILWAY LABOR EXECUTIVES' ASSOCIATION; AND BROTHERHOOD OF
RAILROAD TRAINMEN, 10 INDEPENDENCE AVE. SW., WASHINGTON,
D. C., PLAINTIFFS,

vs.

UNITED STATES OF AMERICA; AND INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

Complaint

Filed Nov. 8, 1940

Now come the plaintiffs and for their cause of action say:

1

The plaintiff Railway Labor Executives' Association, is a voluntary unincorporated association composed of the following standard international railway labor organizations:

- Brotherhood of Locomotive Engineers.
- Brotherhood of Locomotive Firemen and Enginemen.
- Order of Railway Conductors of America.
- Switchmen's Union of North America.
- Order of Railroad Telegraphers.
- American Train Dispatchers' Association.
- Railway Employees' Department, A. F. of L.
- International Association of Machinists.
- International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
- International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
- Sheet Metal Workers' International Association.
- International Brotherhood of Electrical Workers.
- Brotherhood of Railway Carmen of America.
- International Brotherhood of Firemen and Oilers.
- Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
- Brotherhood of Maintenance-of-Way Employees.
- Brotherhood of Railroad Signalmen of America.

2 UNITED STATES VS. RAILWAY LABOR EXECUTIVES ASS'N

National Organization Masters, Mates, and Pilots of America.
National Marine Engineers Beneficial Association.

International Longshoremen's Association.

Order of Sleeping Car Conductors.

2 that said standard international railway labor organizations in turn represent approximately one million railroad employees, among which are employees of the Pacific Electric Railway Company. The principal office of the petitioner Railway Labor Executives' Association is located at 10 Independence Avenue SW., Washington, D. C.

Certain of the organizations comprising said petitioner Railway Labor Executives' Association have agreements with the Pacific Electric Railway Company concerning the rates of pay, rules, and working conditions of the various crafts or classes of employees on said railroad and are duly authorized to represent such employees in this proceeding.

Plaintiff Brotherhood of Railroad Trainmen is an unincorporated association and a standard international railway labor organization including in its membership railroad brakemen and certain other train service employees and has an agreement with the Pacific Electric Railway Company concerning the rates of pay, rules, and working conditions of such employees on the property of the said Company.

By virtue of the foregoing, the plaintiffs herein represent the interests of the employees of the Pacific Electric Railway Company and this action is brought for and in behalf of the said employees.

2

The defendant Interstate Commerce Commission is an independent agency in the executive branch of the government of the United States created by a statute of the United States known as the Interstate Commerce Act, its powers being subject to the provisions of the said Act as originally enacted and as amended from time to time.

3

3

The Pacific Electric Railway Company is a corporation operating extensive electric railroad and motorbus and truck lines in and in the vicinity of the city of Los Angeles, California. It is a wholly owned subsidiary of the Southern Pacific Railroad Company with whose lines it makes connections at numerous points. It is a common carrier by railroad and handles a large volume of traffic, both passenger and freight, local and interstate.

4

Prior to November 13, 1939, the management of the Pacific Electric Railway Company drew up a comprehensive plan for increasing the profits of the operations of that company. The said plan contemplated the abandonment of certain of the railroad lines of the company and arrangements for the handling of the traffic either through the rehabilitation of other rail lines serving the same territory or through the substitution of motorbus and motor-truck service. The said plan did not contemplate the withdrawal of the Pacific Electric Railway Company from any considerable traffic area theretofore served by it.

5

Pursuant to the plan aforesaid, and on the 13th day of November 1939, said Pacific Electric Railway Company acting under and by virtue of Section 1, para. 18, 19, and 20 of the Interstate Commerce Act (U. S. C. Tit. 49, Sec. 1 (18-20)), applied to the defendant Interstate Commerce Commission for a certificate of public convenience and necessity authorizing it to abandon certain of its
4 lines of railroad in Los Angeles, Orange, and Riverside Counties, California. The defendant Interstate Commerce Commission accepted jurisdiction over the said application and assigned to it Finance Docket No. 12643.

6

In the event that the proposed abandonment is consummated, the applicant, its parent company the Southern Pacific Railroad Company, and its security holders, will experience a net gain of approximately \$378,229.00 annually in connection with applicant's operations, while applicant's employees will experience a net wage loss to the extent of approximately \$301,896.10 annually. The exact number and identity of the employees who will lose their employment and their means of livelihood if the proposed abandonment is consummated is unknown to the plaintiffs who believe and allege, however, that the number will be considerable in relation to the total employment of the Pacific Electric Railway Company.

Many of the said employees have devoted a large portion of their productive lives to the service of the Pacific Electric Railway Company and have acquired valuable property rights of seniority in connection with their employment. Many of the said employees are and will be unable to secure other employment in the event of their dismissal by the Pacific Electric Railway Company, will suffer great hardship by reason thereof, and will become public charges.

Uncertainty as to their economic future has subjected labor relations between these employees and the Pacific Electric Railway Company to severe stress which uncertainty and stress have been communicated to other employees of this carrier on other lines not affected by this application, from all of which impairment of employees' morale has resulted. All of the above vitally affects the interests, convenience, and necessity of the public in the premises.

7

Section 1, para. 20, of the Interstate Commerce Act, provides in part as follows:

"The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise of only such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require."

Under and by virtue of the foregoing statutory provision a reasonable discretion is given to the defendant Interstate Commerce Commission in the matter of the granting or withholding of a certificate of public convenience and necessity and in the matter of attaching conditions to a certificate granted. In the exercise of its said discretion, the defendant Interstate Commerce Commission is directed by the statute to consider any and all phases of the convenience and necessity of the public which may be relevant to the case at hand.

By virtue of the said statutory provision, the plaintiffs and the employees represented by them, became vested of the legal right to appear before the defendant Interstate Commerce Commission as members of the public and as persons or the representatives of persons likely to be affected by the abandonment proposed and to present for the consideration of the Commission evidence and arguments concerning the reaction of that effect upon the general convenience and necessity of the public.

8

On the 13th and 14th days of March 1940, the application filed by the Pacific Electric Railway Company as aforesaid was duly set down for hearing before an official of the defendant Interstate Commerce Commission duly empowered to act as trial examiner in this case. At the said hearing, the plaintiffs herein duly appeared as protestants representing the interests of the employees of the applicant. They have participated in all

subsequent proceedings before the defendant Interstate Commerce Commission and have duly and fully asserted to said defendant their legal right as above set forth. In particular these plaintiffs have urged the defendant Interstate Commerce Commission to attach to any certificate of public convenience and necessity which it might issue conditions designed to minimize the effect upon the employees of the abandonment proposed through a provision for a graduated scale of unemployment allowances to be paid out of the savings realized by the Pacific Electric Railway Company from its proposed plan for the rearrangement of its properties. A copy of the specific conditions suggested is hereto attached, marked Exhibit A and made a part hereof.

9

The defendant Interstate Commerce Commission, speaking through Division 4 thereof, duly considered the application of the Pacific Electric Railway Company and issued an order granting the same. It refused, however, to attach to its certificate any conditions for the protection of employees of the applicant such as those suggested to it by the plaintiffs or any others, or to give any consideration to the interests of the employees of the applicant or the effect of the abandonment upon them. The defendant Interstate Commerce Commission did not predicate its ruling upon any finding to the effect that the conditions proposed by these plaintiffs were in themselves unfair, economically unjustified or unfitted to the case at hand, but rather upon the erroneous conclusion that the language of the Interstate Commerce

Act gives to the Interstate Commerce Commission no authority to impose such conditions in abandonment cases or to give any consideration to the effect of abandonment upon employees. It therefore ruled that under no circumstances and in no case involving the abandonment of all or any portion of a line of railroad could it consider any effect thereof upon employees as a phase of the convenience and necessity of the public.

Copy of the report of the Examiner of the Interstate Commerce Commission is attached hereto, marked Exhibit B and made a part hereof. A copy of the decision and order of Division 4 is attached hereto, marked Exhibit C and made a part hereof.

10

This ruling and decision of the defendant Interstate Commerce Commission is erroneous and the order and certificate based thereon are likewise erroneous and should be set aside.

The said ruling and decision of the defendant Interstate Commerce Commission will deprive the plaintiffs and the employees of the Pacific Electric Railway Company whose interests plaintiffs represent, of the enjoyment of valuable property rights in their employment as above described. The said plaintiffs and the employees represented have the further right to appear before the defendant Interstate Commerce Commission in any proceeding involving the abandonment of railroad trackage and protect their property rights aforesaid and to advance evidence showing the effect of the destruction of such rights upon the convenience and necessity of the public. The order of the defendant Interstate Commerce Commission aforesaid denies to the plaintiffs and to the said employees the enjoyment of this right by holding that in no case and under no circumstances can the effect of the abandonment of railroad trackage upon employees be considered in relation to the convenience and necessity of the public.

These plaintiffs and the employees of the Pacific Electric Railway Company represented by them, are threatened with irreparable injury on account of the erroneous order of the defendant Interstate Commerce Commission in that they are subject to the loss of position, compensation, rights of seniority and other valuable property rights if the rail lines mentioned in the application of the Pacific Electric Railway Company are abandoned, in a proceeding wherein they were denied all opportunity to present the effect of their loss in relation to the public convenience and necessity. For this injury the plaintiffs and those represented by them have no remedy save by this action. They have pursued their administrative remedy before the defendant Interstate Commerce Commission to the extent of applying for a rehearing and reargument before the full Commission which rehearing and reargument has been refused. The plaintiffs and those represented by them have no remedy at law in the premises by action for damages or otherwise, and no other remedy whatsoever save by complaint to this Court.

Wherefore the plaintiffs pray:

First, that the Court wholly suspend the operation of the order of the defendant Interstate Commerce Commission aforesaid during the pendency of this action.

Second, that upon hearing, the Court set aside, annul and suspend the aforesaid order of the Interstate Commerce Commission permanently and remand the proceeding to the Commission with instructions that it shall consider the interests of the employees involved in the case as a phase of the public

convenience and necessity, and that it has full power and authority to attach such conditions to its order as it in its discretion finds necessary to the protection of the employees involved.

Third, for such other and further relief as they may be entitled to have, either at law or in equity.

FRANK L. MULHOLLAND,
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CLARENCE M. MULHOLLAND,
1041 Nicholas Bldg., Toledo, Ohio,
WILLARD H. McEWEN,
1041 Nicholas Bldg., Toledo, Ohio,
Attorneys for Plaintiffs.

Edward C. Kriz,
1416 F St. NW., Washington, D. C.,
Attorney for Plaintiff.

[Duly sworn to by J. G. Luhrsen; jurat omitted in printing.]

10

Exhibit A to complaint

APPENDIX A

1. No employee of the Pacific Electric Railway Company, hereinafter designated as the carrier, who is continued in service for a period of five years from the abandonment of any tracks or discontinuance of any operations by virtue of this order, shall be placed, as a result of such abandonment or discontinuance, in a worse position with respect to compensation and rules governing working conditions than he occupied at the date of such abandonment or discontinuance, so long as he is unable, in the exercise of his seniority rights under existing agreements, rules, and practices, to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the date of such abandonment or discontinuance; so long as he is unable to obtain a position with said carrier yielding compensation equal to or exceeding his compensation at the time of the said abandonment or discontinuance, he shall be entitled to a monthly allowance equal to the difference between the monthly compensation of the position in which he is retained and the compensation of the position from which he was displaced, the latter monthly compensation to be considered one-twelfth of the total compensation received by him in the twelve months prior to his displacement, less compensation at the rate of compensation of his retained position for any time lost on account of his voluntary absences, provided, however, that the employee's compensation which it is the purpose of this condition to guarantee shall in no case exceed that which he received in the 12 months prior to his displacement,

11

reduced by any change in wage scales or revision of rules detrimental to the employee, which change or revision is made to affect railroad employees generally, provided further that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any of the employees, and provided further, that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance.

2. Any employee of the carrier who is deprived of employment with said carrier, hereinafter designated as a dismissed employee, because of the abolishment of his position or the loss thereof as a result of the exercise of seniority rights by an employee whose position is abolished as a result of such abandonment or discontinuance, shall be accorded a monthly allowance, designated dismissal allowance, based on length of service (except in the case of an employee with less than one year of service) equivalent to 60 per cent of the average monthly compensation of said dismissed employee during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment. This allowance shall be made to each eligible employee while unemployed during the period beginning with the date he is deprived of employment and extending in each instance for a length of time determined and limited by the following schedule:

12

Length of service:

Period of
payment,
months

1 year and less than 2 years.....	6
2 years and less than 3 years.....	12
3 years and less than 5 years.....	18
5 years and less than 10 years.....	36
10 years and less than 15 years.....	48
15 years and over.....	60

A dismissal allowance shall cease prior to the expiration of the prescribed period in the event of failure of the employee, without good cause, to return to service after being notified by the carrier of a position for which he is eligible, and the dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his monthly earnings in such employment and his dismissal allowance exceed the amount upon which his dismissal allowance is based. An employee shall not be regarded as a dismissed employee in case of his resignation, death, retirement on pension, dismissal for good cause, or furlough because of reduction of forces due to seasonal requirements. A dismissal allowance shall cease prior to the expiration of the prescribed period in the event of resignation, death, retirement on pension, or dismissal for good cause.

3. Any employee retained in the services of the carrier or restored to service from the group of employees entitled to receive

a dismissal allowance, who is required to change the point of his employment as a result of such abandonment or discontinuance, designated as a transferred employee, and who is required, within one year from the date of such abandonment or discontinuance, to move his place of residence, shall be reimbursed for expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed two days, the exact extent of the responsibility of the carrier to be agreed upon in advance by the said carrier and the employee affected, provided, however, that changes in places of residence, subsequent to the initial change caused by the abandonment or discontinuance, which result from the exercise of seniority rights, shall not be considered as within the foregoing provision.

4. Any transferred employee who owns his home, or an equity therein, shall be protected against any loss suffered in the sale thereof, within one year of the effective date of operation under said lease, for not less than its fair value, said fair value to be determined as of a date 30 days prior to the filing of the application in this proceeding by the carrier, and such fair value to be agreed upon by the carrier and each employee prior to such sale, and, if any transferred employee holds an unexpired lease of a dwelling occupied by him as a home, the carrier shall protect him from loss and cost in securing cancellation of his lease.

14 *Exhibit B to complaint*

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 12643

PACIFIC ELECTRIC RAILWAY COMPANY ABANDONMENT

Submitted ——— Decided ——— •

Recommended that division 4 find that the present and future public convenience and necessity permit (1) abandonment by the Pacific Electric Railway Company of lines or portions of lines of railroad in Los Angeles, Orange, and Riverside Counties, Calif., except certain lines, as to which the application should be dismissed, and (2) abandonment of operation, under trackage rights, by that carrier over the line of the Union Pacific Railroad Company in Riverside and San Bernardino Counties in said State.

Frank Karr and C. W. Cornell for applicant.

E. Everett Bennett for Union Pacific Railroad Company.

Arthur C. Jenkins for Railroad-Commission of California.

W. J. Rountree, R. V. Rachford, Cornelius W. McInerny, Jr., and C. M. Mulholland for protestants.

REPORT PROPOSED BY R. ROMERO, EXAMINER

The Pacific Electric Railway Company on November 13, 1939, applied for permission (1) to abandon lines or parts of lines of railroad, hereinafter specifically described, aggregating 96.58 miles, all in Los Angeles, Orange, and Riverside Counties, Calif., and (2) to abandon operation, under trackage rights, over a line of the Union Pacific Railroad Company, approximately 8.47 miles, all in Riverside and San Bernardino Counties, Calif. Protests were filed by the Brotherhood of Railroad Trainmen and others, and a hearing was held, at which the Railroad Commission of California was represented by counsel. Briefs have been filed.

This application is the result of a general program of rearrangement of the applicant's passenger service, involving abandonment of certain rail lines and substitution of motor-coach transportation as a means of increasing operating revenues, reducing expenses, and rendering a more adequate service to the public. The engineering staff of the Railroad Commission of California made a comprehensive survey of all phases of the applicant's operation, resulting in certain recommendations which the applicant, in the main, incorporated in its proposed plan. Portions of the plan have been approved in part by the State commission, while other parts are awaiting disposition by that body.

The applicant questions the jurisdiction of this Commission over certain lines, hereinafter identified, used exclusively in local transportation of persons or property unrelated to interstate transportation. All of the applicant's capital stock, and a substantial portion of its bonds, are owned by the Southern Pacific Company, but the operations of each company are conducted separately. The Pacific Electric Railway is located wholly within the State of California and is operated in both interstate and intrastate commerce. Division 4 heretofore has taken jurisdiction of the operation of the applicant's railroad in proceedings before it under section 1 (18) of the Interstate Commerce Act. Unified Operation at Los Angeles Harbor, 150 I. C. C. 649, and Southern Pac. R. Co. Abandonment, 187 I. C. C. 410.

The present case does not involve cessation of all interstate operations. The result of any intrastate operation necessarily would be reflected in the applicant's income from operation of its entire railroad system and would or might impose an undue burden upon interstate commerce. Consequently the Commission's jurisdiction also extends to the operation of the lines handling the purely intrastate business. See *Texas v. Eastern Texas R. Co.*, 258 U. S. 16 204, and *Colorado v. United States*, 271 U. S. 153.

The lines or portions of lines proposed to be abandoned, referred to collectively as the lines or segments, were constructed

primarily for interurban passenger and freight service and, excepting the line operated under trackage rights, are the properties of the applicant, practically all having been acquired in 1911. Rail connections are effected with other lines of the applicant, but other than with two of the segments, there are no connections with other railroads. The lines, for the most part, are in a fair state of maintenance. Their aggregate salvage value is estimated at approximately \$504,249.

Operations of most of the segments are conducted between Los Angeles and adjoining areas handling passenger traffic almost exclusively, and serving principally a densely populated territory largely residential in character. Daily passenger service is rendered, and in most cases at frequent intervals during the day. Service for the small volume of freight available is ordinarily furnished on demand. A large number of the lines are without freight or passenger stations. In most cases the segments are closely paralleled by main highways and intersected by numerous secondary routes and city streets. In some instances the tracks are located on paved streets in which case the applicant is required to maintain the paving between the tracks and two feet on each side. In the event of abandonment the applicant proposes to substitute motor transportation for the rail service, except where otherwise hereinafter indicated.

The following is a description of the lines, together with matters having particular application:

- 17 1. Venice short line and the Echo Park Avenue line.

The portion of the Venice short line commencing at Overland Avenue, milepost 10.26, to Pacific Avenue, Venice, thence northerly to Santa Monica Boulevard, Santa Monica, milepost 17.14; approximately 6.88 miles, and the Echo Park Avenue line extending from track connection in Sunset Boulevard at Echo Park Avenue, milepost 2.29, to the end of the line at Cerro Gordo Street, milepost 3.54, approximately 1.25 miles.

At the hearing the applicant withdrew the application insofar as it concerns both lines.

2. Sawtell line.

The portion extending from Sepulvedo Boulevard, West Los Angeles, milepost 15.10, thence westerly on Santa Monica Boulevard to track connection on Ocean Avenue, Santa Monica, milepost 19.04, approximately 3.94 miles.

The Sawtell line, sometimes referred to as the Los Angeles-Santa Monica via Beverly Hills line, extends from Los Angeles to Santa Monica. The area served by the segment has a population of approximately 12,000. The number of passengers handled on the entire Sawtell line, including its Brentwood branch, hereinafter described, during the five years 1934-38 was 10,541,980, with cor-

responding revenues of \$1,312,860. The results of operation of the Sawfell segment for the 5-year period are shown as follows: System revenues from passenger traffic \$712,880, operating expenses \$175,198, cost of moving the traffic beyond the limits of the segment \$364,360, taxes \$19,442, total expenses \$559,000, and profit from operation of \$153,880, or, by years, in order, \$32,178, \$29,154, \$31,419, \$36,064, and \$25,065.

18 The segment is located on Santa Monica Boulevard, a paved street. Reconstruction of the track will be required within the next five years at an estimated cost of \$241,000. The equipment on this line was placed in service in 1908. It is unsatisfactory, obsolete, and badly undermaintained. To repair the equipment would require an expenditure of approximately \$2,000 a car, and it still would be old and unsatisfactory. The number of cars was not stated in this connection, but cost of maintenance of passenger cars was \$4,309 in 1938. To continue operation successfully, new or different rail equipment is believed essential. Because of the large expenditures required for reconstruction and the present condition of the equipment, the applicant states that it is compelled to seek abandonment of this segment, notwithstanding the favorable operating results. The applicant has another available rail route between Los Angeles and Santa Monica over its Venice short line.

3. Brentwood line.

Extending from track connection on Santa Monica Boulevard, West Los Angeles, milepost 15.51, to San Vicente Boulevard and Ocean Avenue, thence southerly on Ocean Avenue to Santa Monica Boulevard, Santa Monica, milepost 21.41, approximately 5.90 miles.

This segment, which is also part of the Los Angeles-Santa Monica via Beverly Hills line, serves an area of approximately 6,000 residents along San Vicente Boulevard. The results of operation of the segment for the five years 1934-38, according to the applicant's exhibits, are as follows: System passenger revenue \$164,105, operating expenses \$187,451, cost of moving

19 the traffic beyond the segment \$84,254, taxes \$43,984, total expenses \$315,689, and loss from operation \$151,584, or, by years, in order, \$19,912, \$26,712, \$31,845, \$34,122, and \$38,993. Operations of the bus service proposed to be substituted will be conducted by the Los Angeles Motor Coach Company, of which the applicant owns 30 percent of the stock.

4. Western and Franklin Avenue line.

Extending from track connection in Santa Monica Boulevard at Western Avenue, milepost 5.85, to track connection at Vine Street, Hollywood, milepost 8.10, approximately 2.25 miles.

This segment provides a shuttle service for an area in the Hollywood district having a population of approximately 7,500, and handles intrastate traffic only. Passengers transported in the five years 1934-38 aggregated 5,865,220. The results of operation for the 5-year period are indicated as follows: Passenger revenues \$245,815, operating expenses \$125,043, taxes \$10,552, total expenses \$135,595, and profit from operation \$110,220, or, by years, in order, \$17,959, \$19,702, \$27,153, \$27,601, and \$17,805. Operations are conducted partly on Franklin Avenue, a very narrow street. The rail service, according to the applicant's witness, is objectionable to the residents along the street and to the city of Los Angeles. Decision to seek elimination of this segment, notwithstanding its profitable operation, was prompted largely by the wishes of the city officials to have a motor-coach service substituted for the rail service.

5. Venice freight line.

Extending from track connection at Pacific Avenue near Windward Avenue, Venice, to connection with the Venice short line, also portion connecting with the applicant's Inglewood line near Washington Boulevard, a total of approximately 0.88 mile.

20. No traffic has been handled on this segment during the past five years. The track has been used largely for storage purposes. For the five years 1934-38 expenditures for maintenance of way and structures amounted to \$5,109 and taxes to \$8,751, or a total loss of \$13,860. No substitution in service is contemplated in connection with this line.

6. Redondo Beach via Playa del Rey.

Extending from rail crossing at or near Alla, milepost 13.25, through Playa del Rey, to Diamond Street and Pacific Avenue, Redondo Beach, milepost 23.73, approximately 10.48 miles.

This segment forms a part of the Los Angeles-Redondo Beach via Playa del Rey line extending from Los Angeles to Redondo Beach. It serves an area primarily residential, having approximately 25,000 inhabitants. The freight stations on the segment are Playa del Rey, Hyperion, El Segundo Wharf, Manhattan Beach, Hermosa, Beach, and Redondo Beach. The stations have no other railroad service, except the last three, which are also served by the Atchison, Topeka & Santa Fe Railway. Other than Redondo Beach, the stations are nonagency.

The passenger traffic handled on the entire Los Angeles-Redondo Beach via Playa del Rey line for the five years 1934-38 amounted to 2,831,262 passengers, with corresponding revenues of \$578,915. Carload traffic transported on the segment during the period mentioned aggregated 95 cars, while the tonnage of less-than-carload freight was negligible. The results of operation of the segment

for the 5-year period are shown as follows: System operating revenues \$455,758, operating expenses \$292,825, cost of moving the traffic beyond the segment \$144,687, taxes \$101,474, total expenses \$538,986, and loss from operation \$83,228, or, by years, in order, \$6,849, \$22,161, \$19,815, \$19,585, and \$14,818.

7. Redondo Beach via Gardena line.

Extending from Arlington Avenue, Moneta, milepost 15.15, to end of line at point south of Avenue I, Redondo Beach, milepost 22.16, approximately 7.01 miles.

This segment is part of the Los Angeles-Redondo Beach via Gardena line which extends from Los Angeles to Redondo Beach. The area served is principally residential and has a population of approximately 14,000, of which 12,000 reside at Redondo Beach, already included in the population indicated for the Redondo Beach via Playa del Rey line. The freight stations on the segment are Bridgedale, La Fresa, Perry, El Nido, and Clifton, all of which are nonagency stations and are without other railroad service. A passenger station is located in Redondo Beach.

The passenger traffic handled on the entire Los Angeles-Redondo Beach via Gardena line for the five years 1934-38 amounted to 1,737,698 passengers; with corresponding revenues of \$294,408. carload freight moving over the segment for the same period aggregated 186 cars. The results of operation of the segment for the 5-year period are indicated as follows: System revenues \$165,869, operating expenses \$142,461, cost of moving the traffic beyond the segment \$89,211, taxes \$56,090, total expenses \$287,762, and loss from operation \$121,893, or, by years, in order, \$17,799, \$22,802, \$23,068, \$31,165, and \$27,059.

In the event of abandonment no substituted service is contemplated, other than for the handling of less-than-carload freight or express by motor truck to and from most points along the segment. Motor common-carriers operate in this area.

8. Long Beach local lines.

(a) Pine Avenue line. Extending from track connection in Ocean Boulevard and Pine Avenue to track connection in American Avenue north of Fourteenth Street, approximately 1.37 miles.

(b) Pacific Avenue Loop line. Extending from track connection in Ocean Boulevard and Pacific Avenue to track connections at First Street and Pine Avenue, 0.15 mile.

(c) Seventh Street line. Extending from track connection in Pine Avenue and Seventh Street to track connection in Redondo Avenue, approximately 2.32 miles.

(d) Seal Beach line. Extending from track connection in Pine Avenue and Third Street, Long Beach, to a connection with Newport Beach line, Seal Beach, approximately 5.85 miles.

* (e) Redondo Avenue line. Extending from a point north of the north line of Eleventh Street to a connection with the Seal Beach line between First and Second Streets, also track on Broadway from Redondo Avenue to a connection with the Seal Beach line in Paloma Avenue, approximately 1.49 miles.

(f) Alamitos Extension and East Second Street line. Extending from track connection with the Seal Beach line at Thirty-ninth Place to connection with the Newport Beach line at Second Street and Appian Way, approximately 1.83 miles.

The Long Beach lines serve an area of approximately 34,400 inhabitants, rendering passenger service only. Other than the Seal Beach line, the segments are devoted exclusively to the transportation of intrastate traffic. Passengers handled on the segments during the five years 1934-38 totaled 13,208,341. The results of operation for the same period are shown as follows: System operating revenues \$636,694, railway operating expenses \$560,494, taxes \$73,774, total expenses \$634,268, and profit from operation \$2,426, or, by years, in order, \$6,425, \$2,395, \$10,901, \$56, and \$17,351 (loss).

The Seventh Street line and the Seal Beach line will require expenditures within the next five years estimated at \$158,000 and \$134,700, respectively, for reconstruction and paving. There is no proposal to substitute for the rail service other forms of transportation. Long Beach at present is provided with local motor coach service by the Lang Motor Bus Company, which for the most part supplies the local bus transportation. Other rail lines of the applicant between Los Angeles and Long Beach will continue in operation. Independent bus operators have made application to operate a motor coach service in substitution for the service now provided by the rail lines proposed to be abandoned.

9. Newport Beach line.

Extending from Twenty-first Street, Newport Beach, milepost 37.88, to end of line at A Street. Balboa; milepost 39.64, approximately 1.76 miles.

This segment, which is part of the Los Angeles-Newport Beach line extending from Los Angeles to Balboa, serves a territory with a population of approximately 5,000 inhabitants. The passenger traffic on the entire Los Angeles-Newport Beach-Balboa line for the five years 1934-38 amounted to 975,278 passengers, with corresponding revenues of \$331,002. One carload shipment was made on the segment during the period, and the less-than-carload traffic was negligible. The results of operation for the same period

are shown as follows: System operating revenues \$73,420, operating expenses \$16,268, cost of moving the traffic beyond the segment \$46,969, taxes \$23,208, total expenses \$86,445, and loss

from operation \$13,025, or, by years, in order, \$1,201 (profit), \$2,607, \$3,420, \$3,510, and \$4,689 (losses).

10. La Habra line.

Extending from a point near Mountain View Avenue, Yorba Linda, milepost 30.66, to end of line at Stern, milepost 32.01, approximately 1.35 miles.

This segment serves an area of approximately 2,000 inhabitants. No traffic has been handled on the line for the past five years. For the five years 1934-38 expenditures for maintenance of way and structures amounted to \$3,151 and taxes \$1,437, or a total loss of \$4,588. No substitution for the rail service is proposed. The area would be served from Yorba Linda.

11. Rialto-Riverside line.

(a) Extending from a point in Riverside Avenue, Rialto, milepost 53.43, to Houghton Avenue, Riverside, milepost 61.60, approximately 8.47 miles.

(b) Extending from Houghton Avenue, Riverside, milepost 61.60, to First Street, milepost 61.77, approximately 0.17 mile.

These segments form part of the Los Angeles-Pomona-Riverside-San Bernardino line extending from Los Angeles to San Bernardino and Riverside. The Rialto-Riverside line described in bracket (a) is owned by the Union Pacific Railroad Company but has been operated for passenger service by the applicant, under trackage rights, since 1915. Abandonment of operation only of this segment is sought.

25 The population of the territory served by both segments is approximately 37,500. There is a nonagency freight station located at Poole on the line operated under trackage rights, not far from Rialto, which is an interchange point with the Union Pacific Railroad. A passenger station is located on the line at Riverside. The population of Riverside is approximately 35,000, and it is also served by the Union Pacific Railroad, the Atchison, Topeka & Santa Fe Railroad, and the Southern Pacific Railway. The applicant does not serve intermediate points on the Rialto-Riverside line, as operation is restricted to through service.

The passenger traffic handled during the five years 1934-38 on the entire Los Angeles-Pomona-Riverside-San Bernardino line amounted to 5,521,951 passengers, with corresponding revenues of \$1,763,456. Freight service on the segment is conducted between Rialto and Poole only. Carload traffic handled during the 5-year period amounted to 3,051 cars.

The results of operation of the segments for the 5-year period are indicated as follows: System operating revenues \$222,073, operating expenses \$201,413, cost of moving the traffic beyond the segments \$127,346, taxes \$7,029, total expenses \$335,788, and loss from operation of \$113,715, or, by years, in order, \$25,744, \$20,169,

\$20,508, \$24,941, and \$22,353. For the past four years the freight revenues slightly exceeded the passenger revenues. No form of transportation would be substituted for the passenger service, resulting in no direct rail service between Riverside and Rialto, but rail connections would still be available by way of San Bernardino. The freight service will be conducted by the Union Pacific Railroad.

26 12. Pasadena local lines.

(a) Altadena line, extending from Walnut Street and Fair Oaks Avenue, Pasadena, to track connection on Lake Avenue and Mariposa Street, Altadena, approximately 4 miles.

(b) Lincoln Avenue line, extending from Fair Oaks and Lincoln Avenues to end of line at Montana Street, approximately 2.30 miles.

(c) East Colorado Street line, extending from track turnout to tracks in Lake Avenue at Colorado Street and Lake Avenue to the end of line at Daisy Avenue, Lamanda Park, approximately 2.27 miles.

(d) Lake Avenue line, extending from track turnout to tracks on Colorado Street at Colorado Street and Lake Avenue to track connection at Mariposa Street and Lake Avenue, Altadena, approximately 2.94 miles.

The Pasadena local lines serve, in passenger service only, an area having approximately 22,700 inhabitants. Transportation is limited to intrastate traffic. Passengers handled on the lines during the five years 1934-38 totaled 19,126,239. The results of operation for the same period are indicated as follows: System railway operating revenues \$971,029, railway operating expenses \$655,227, taxes \$49,509, total expenses \$704,736, and profit from operation of \$266,293, or, by years, in order, \$58,298, \$44,176, \$60,677, \$57,304, and \$45,838. The Altadena line, the Lincoln Avenue line, and the Lake Avenue line will require, within the next five years, expenditures of approximately \$73,700, \$73,500, and \$185,700, respectively, for reconstruction and paving.

13. Burbank line.

Extending from Cypress Avenue, Burbank, milepost 12.91, to end of line at Eton Drive, milepost 13.93, approximately 1.02 miles.

27 This segment, which serves an area with a population of approximately 250, is part of the Los Angeles-Glendale-Burbank lines operating between Los Angeles and Burbank.

The passenger traffic handled on the entire Los Angeles-Glendale-Burbank line during the five years 1934-38 aggregated 17,348,508 passengers, with corresponding revenues of \$1,847,083. Freight handled on the segment for the period mentioned amounted to 105 carloads. The results of operation are indicated

as follows: System railway operating revenues \$8,261, railway operating expenses \$11,675, cost of moving the traffic beyond the segment \$823, taxes \$1,700, total expenses \$14,198, and loss from operation of \$5,937, or, by years, in order, \$2,193, \$1,807, \$491, \$911, and \$535. In the event of abandonment no substitution in service is contemplated. The area would be served from Burbank.

14. Edendale line.

Extending from a point in East Sixth Street near San Pedro Street, milepost 0.32, to the end of the line south of Fourth Street and easterly of Central Avenue, Los Angeles, milepost 0.92, approximately 0.60 mile.

The segment serves an area having a population of approximately 1,250 inhabitants and is part of the Edendale line which operates in Los Angeles, a distance of approximately 6 miles. The city of Los Angeles has refused to renew the franchise for operation over certain portions of the Edendale line. Continued operation of the segment would necessitate a change in route.

The passenger traffic handled on the entire Edendale line during the five years 1934-38 amounted to 13,266,032 passengers, with corresponding revenues of \$612,171. The results of operation of the segment for the period indicated are as follows:

28 System operating revenues \$37,221, railway operating expenses \$59,854, cost of moving the traffic beyond the segment \$27,917, taxes \$2,475, total expenses \$90,246, and loss from operation of \$53,025, or, by years, in order, \$9,924, \$10,653, \$10,591, \$9,799, and \$12,058. An expenditure of \$13,240 would be required within a short time for reconstruction and resurfacing of the track. It is not contemplated to substitute transportation service for that proposed to be discontinued because it is not deemed warranted.

15. San Fernando line, also Owensmouth line.

Extending from a point on the San Fernando line south of Wyandotte Street, milepost 20.62, to a point on the north side of Chatsworth Street, milepost 25.75, approximately 5.13 miles; also from a point in the Hollywood-Van Nuys line south of Wyandotte Street, milepost 20.33, to the end of the line west of Topanga Canyon Avenue, milepost 29.54, approximately 9.21 miles.

These segments serve an area containing approximately 17,000 inhabitants and are part of the Los Angeles-Van Nuys-San Fernando-Canoga Park line operating between Los Angeles, Canoga Park, and San Fernando. Freight stations on the San Fernando segment are Wyandotte, Mission Acres, and Plummer, all nonagency stations. The freight stations on the Owensmouth line are Picover, Hanna, Reseda, and Canoga Park, all of which are nonagency stations. The last named is served also by the Southern Pacific Company.

Passenger traffic handled on the entire line for the four years 1934-37 and the first five months of 1938 amounted to 2,927,068 passengers, with corresponding revenues of \$598,567. On June 1, 1938, motor coach service was substituted for the rail passenger service. Freight moving during the five years 1934-38* amounted to 650 cars between points on the segments and points beyond, and 1,372 cars of overhead or bridge traffic.* The results of operation of the segments are indicated as follows: System railway operating revenues \$140,781, railway operating expenses \$202,747, cost of moving the traffic beyond the segment \$61,922, taxes \$23,537, total expenses \$288,206, and loss from operation of \$147,425, or, by years, in order, \$20,503, \$30,588, \$30,495, \$34,588, and \$31,251. The applicant would substitute motor truck transportation for the freight service proposed to be abandoned.

16. Mount Lowe line.

Extending from Lake Avenue and Mariposa Street, Altadena, milepost 15.44, to the end of the line at Mount Lowe Tavern, milepost 21.20, approximately 5.76 miles.

This segment serves an area containing approximately 500 inhabitants. The traffic handled thereon for the four years 1934-37 amounted to 249,054 passengers, with corresponding revenues of \$108,260. The results of operation for 1934, 1935, and the first nine months of 1936 are indicated as follows: System railway operating revenues \$103,333, operating expenses \$50,237, cost of moving the traffic beyond the segment \$34,347, taxes \$8,044, total expenses \$92,628, and profit from operation of \$10,705, or, by years, in order, \$2,562, \$2,312, and \$5,831. The passenger service was discontinued in February 1938, and no rail service has been rendered since. This line was operated to serve principally Mount Lowe Tavern, which burned in 1936 and has not been rebuilt. No service would be substituted for that proposed to be abandoned, as the traffic available does not warrant it. The nearest rail service to the area would be at Pasadena, about 2.25 miles.

This completes the individual description of the lines.

The passenger revenues were derived almost entirely from traffic local to the applicant's line. No information is available as to interline passenger traffic. In determining the operating results each segment was credited with the entire system revenues from all traffic handled thereon. The operating expenses were apportioned, for the most part, on a mileage basis. Some charges for maintenance of way and structures were prorated on the basis of actual expenses incurred. Where it is proposed to abandon an entire line, no charge is made to cover the cost of moving the traffic

*Since August 1938, the overhead traffic has been transported over another track.

beyond the segment, as practically all traffic handled was local to the line. -Where a portion of a line is involved, an estimate was made of the total cost of operating the section of the line beyond the segment based on costs derived on a car-mile basis, and of that estimated sum a portion was charged to the segment for handling the traffic beyond in the same ratio as the segment revenue from traffic other than local bears to the revenue of the entire line. For instance, in the case of the Santa Monica-Beverly Hills line, the 1938 revenue from segment traffic moving beyond was \$140,521, or 52.13 percent of \$269,558, the total line revenue. The total estimated cost of operating the section of line beyond the point proposed to be abandoned is \$150,960, so that the proportional amount charged for handling the traffic beyond the segment is 52.13 percent of that amount, or \$78,695. The principal tax charged was an ad valorem tax based on the assessed values of the properties.

The applicant's income accounts for the past 15 years indicate that operations of the entire railroad have resulted
 31 in substantial net losses. During the period 1927-33 railway operating revenues declined from approximately \$19,000,000 to about \$9,000,000. The revenues for the last four years have fluctuated between \$10,000,000 and \$11,000,000. Expenditures for maintenance of way and structures for each of the last nine years have been approximately but half, or less, of the amount appropriated for that purpose in 1927, resulting in the accrual of large amounts of deferred maintenance. It was stated that on that account there is urgent need of material increases in expenditures for maintenance if the applicant's lines are to be kept in operation and render satisfactory service to the public. For the past eight years the applicant has incurred deficits in net railway operating income ranging from \$17,743 in 1936 to \$826,505 in 1938, and a deficit of \$608,989 in 1939.

The Southern Pacific Company from time to time has made advances to the applicant for capital additions and betterments, for operating expenses when not earned, and for the payment of interest on the outstanding bonds held by the public. According to estimates made by the State commission in proceedings before it, the gross revenues received by the Southern Pacific on freight interchanged with the Pacific Electric Company in 1937, amounted to \$4,591,417, resulting in a profit of \$1,836,567, if the out-of-pocket cost of handling the business is based on 60 percent of the gross revenues, and \$1,377,425, if the cost is based on 70 percent. It was estimated that in the absence of the present corporate relationship between the Southern Pacific and the applicant, the former's gross revenue from the latter's traffic would be more
 32 than \$1,000,000 less than under existing affiliations. It was also estimated that the Atchison, Topeka & Santa Fe

Railway Company's share of the freight moving to or from the lines of the Pacific Electric was \$662,019, while that of the Union Pacific amounted to approximately \$1,000,000.

Future expenses, if the segments are continued in operation as at present, for ordinary maintenance of way and structures are expected to increase in the next seven years from \$79,906 in 1940 to \$190,894 in 1944 and each year thereafter, exclusive of an expenditure of \$866,600 within the next five years for reconstruction of tracks and paving of city streets. The proposed abandonments would eliminate expenses in maintenance of way, including expenses for reconstruction and paving, averaging about \$303,400 a year for a 7-year period. The cost of maintaining way and structures of the entire railroad if present operations continue without change would average approximately \$1,897,284 a year, based on the same number of years.

In advocating the proposed program of rearrangement the applicant states that it was not motivated by the excessive cost of rehabilitating the rail equipment, as its cost is practically the same as that for motor coaches, but rather by the expenditures which would be required for maintenance and rehabilitation of the line itself and the public preference for motor transportation. Based upon studies of the applicant begun in 1935 and completed in August 1939, it was concluded that the proposed abandonments, substitutions, and changes would result in an increased net operating benefit of \$1,109,022 a year. The studies embrace changes not yet presented either to this Commission or to the State commission. It is stated that in arriving at the increased net operating benefit, consideration was given to deferred maintenance, 33 depreciation of equipment, increased revenue as the result of the elimination of the unprofitable segments, improvement in service, and operating savings in power, equipment, maintenance, and taxes.

Comparisons of the present rail operations with the proposed operations in connection with the main segments have been submitted. Where the segment is part of a line the cost of operation embraces the entire line, as well as its corresponding motor service. Where dual operation is performed the expenses of the portion jointly used are prorated. The estimate shows revenues, out-of-pocket expenses, and net out-of-pocket profit or loss under (a) present rail operation, (b) continued rail operations with present equipment and type of service based on a 5-year average, and (c) the proposed motor operation. The rail out-of-pocket cost consists principally of expenses for maintenance of way and structures, maintenance of equipment, power, wages of trainmen, cleaning and lubricating cars, and taxes. The aggregate net out-of-pocket profit or loss shown is a total profit of \$63,698 under present

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rail operations, a deficit of \$131,176 under continued rail operation, and a profit of \$441,927 under the proposed motor coach service, or a gain under proposed over present operations of \$378,229. The estimate, according to the witness, is based upon the theory that rail operating revenues will decrease in the next five years and expenses of maintenance of way and structures will increase. The motor coach operations are estimates based on the applicant's experience in that field.

The Railway Labor Executives' Association and the Brotherhood of Railroad Trainmen are the only protestants showing active opposition to the granting of the application. No witnesses

34 appeared in behalf of the protestants. Counsel for the labor organizations submitted a copy of an agreement between the applicant and the Brotherhood of Railroad Trainmen relative to rates of pay, working conditions, and other incidental matters, and also a copy of what is known as the job protective agreement entitled "Agreement of May, 1936, Washington, D. C.," entered into between a large number of railroad companies, exclusive of the applicant, and railway labor executives.

The labor organizations, at times hereinafter referred to as the protestants, contend that the operation of motor busses under the proposed plan will aggravate an already acute traffic congestion on the highways, particularly in and about the city of Los Angeles, the rail operations being conducted to a large extent over privately-owned rights-of-way.

It is conceded by the protestants that the proposed abandonment would strengthen the operating and financial position of the applicant and its parent company, the Southern Pacific, but it is contended that the plan would be effected largely at the expense of employees. The protestants estimate the profit to the Southern Pacific from freight traffic interchanged with the Pacific Electric at \$160,353 a year. The estimate is arrived at by using the 1937 profit of \$1,836,567 and deducting therefrom \$1,676,214, which represents the interest paid by the Southern Pacific on the bonded debt. The latter figure was determined by subtracting from the applicant's 1939 deficit in net income of \$2,918,734 a sum equal to 52 percent of \$2,389,462 charged to interest on funded debt in 1939. This calculation, however, does not appear to have taken into consideration the fact that the applicant is indebted in open account to the Southern Pacific to the extent of approximately \$50,000,000.

35 In 1936 the applicant's force of employees was reduced from about 7,500 to 3,500 men. The number employed at present is approximately 4,000. The rehabilitation program is expected to result in an increase in employment, but if it should cause displacement of train-service employees the applicant is un-

willing to pay compensation for loss of employment. However, an effort would be made to replace any such employee in other departments, wherever possible, until such time as employment would become available in the transportation department. Of approximately 32 men recently displaced because of reduction in service in Long Beach and discontinuance of service on the Gardena-Redondo line, and the Torrance branch, 15 men are at present out of employment, but the applicant expects to reinstate them during the current year. The Sawtell segment is operated by approximately 50 motormen and conductors, one-half of whom would be removed from their present positions under the rearrangement program. There will be removals from other segments as well, in numbers unknown at present. Nevertheless the applicant anticipates absorption of all displaced employees in the ordinary turnover resulting from death, retirement, disability, and resignation. Some will qualify as motorbus operators. All these anticipations are based largely on past experiences.

The applicant submitted exhibits showing age of trainmen and motor coach operators, seniority of train service employees, rate of pay to train and motor coach service employees, skilled shop labor, and construction and maintenance-of-way forces. Of the trainman and motor coach operators 454 are under 40 years of age, 581 are 40 years and over, 406 are 50 years and over, and 102 are 60 years and over. According to calculations made by the protestants on the information furnished by the applicant, of the train-service employees 19 have seniority of less than one year, 317 have one year and less than 10 years, 307 have 10 years and less than 15 years, and 843 have 15 years and over. The hourly rate of pay to train and motor coach service employees since October 1, 1937, has ranged from 63.5 cents to 99.7 cents.

According to calculations made by the protestants, based on information furnished by the applicant's exhibit showing comparisons of present rail operations with the proposed operations in connection with the main segments, wages to rail motormen and conductors would be reduced to the extent of \$290,968 annually, while wages of motor coach drivers will increase by \$79,599 a year, resulting in a net annual loss of wages of train and bus operators of \$211,369. It is estimated that additional wage losses would result in the maintenance of way and maintenance of equipment departments, amounting to \$125,565, which would be offset by wage increases in truck operations of about \$34,938, or a net loss of \$90,627. Wages in these departments were ascertained on the basis of certain percentages which, according to the applicant's estimates, represent the labor cost ranging from 60 to 70 percent of the total expenses in that field. According to the foregoing calculation, the aggregate

saving of \$378,229 under the proposed plan includes a total of \$301,996 as the cost of labor.

In the event of abandonment the protestants seek the imposition of conditions for the protection of the interest of employees substantially in effect as those imposed in Chicago, R. I. & G. Ry. Co.

Trustees Lease, 230 I. C. C. 181. On brief, counsel for the labor organizations sets forth considerable argument, citing several extracts from the recent decision of the United States Supreme Court in United States v. Lowden, 308 U. S. 225, and from other cases, in support of the contention that this Commission has authority to impose conditions for the protection of employees in abandonment proceedings, as is the case in proceedings under section 5 (4) of the Interstate Commerce Act. Counsel concludes that the results of abandonment of a portion of a railroad system, as in the instant proceeding, are comparable to those secured from a consolidation or coordination of railroads; that in the one case contemplated economies are expected to result from a rearrangement of available facilities in such a manner as to better meet public need, while the other case is predicated upon expected economies to be derived from the elimination of certain duplicated operations or facilities; that in both situations the application is based on the ground that the railroad and the public will benefit by the elimination of wasteful operations; and that in either case the elimination of operations results in loss of employment, so that any public benefit accruing to the carrier is acquired at the expense of a corresponding loss to the employees.

In Chicago, Springfield & St. Louis Ry. Co. Receiver Abandonment, 236 I. C. C. 765, decided February 21, 1940, involving the abandonment of an entire railroad, division 4 stated that the Commission is without authority to attach conditions for the protection of employees in abandonment proceedings, citing Chicago G. W. R. Co. Trackage, 207 I. C. C. 315. See also in this connection Quincy, O. & K. C. R. Co. Abandonment and Control, 233 I. C. C. 471.

Under the proposed plan of rearrangement the public will continue to receive common-carrier transportation in cases where motor coach service will be substituted for that proposed to be discontinued. Where no substitution in service is contemplated there is no apparent further public need for it. Substantial savings undoubtedly would be effected by the abandonments but probably not to the extent anticipated by the applicant. Under the circumstances, to continue operation of the lines hereinafter recommended to be abandoned would impose an undue burden upon the applicant and upon interstate commerce.

It is recommended that division 4 find that the present and future public convenience and necessity permit (1) abandonment by the

Pacific Electric Railway Company of its lines or portions of lines of railroad in Los Angeles, Orange, and Riverside Counties, Calif., described herein, excepting the Venice short line, and the Echo Park Avenue line, as to which the application should be dismissed, and (2) abandonment of operation, under trackage rights, by the Pacific Electric Railway Company over the line of the Union Pacific Railroad Company in Riverside and San Bernardino Counties, in said State, also described herein. An appropriate certificate and order should be issued.

Exhibit C to complaint

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 12643

PACIFIC ELECTRIC RAILWAY COMPANY ABANDONMENT

Submitted July 20, 1940. Decided August 28, 1940

1. Certificate issued permitting (a) abandonment by the Pacific Electric Railway Company of certain lines or portions of lines of railroad in Los Angeles, Orange, and Riverside Counties, Calif., and (b) abandonment of operation, under trackage rights, by that carrier over the line of the Union Pacific Railroad Company in Riverside and San Bernardino Counties in that State.

2. Application dismissed as to certain lines in Los Angeles County, Calif.

Frank Karr and C. W. Cornell for applicant.
E. Everett Bennett for Union Pacific Railroad Company.
Arthur C. Jenkins for Railroad Commission of California.
W. J. Rountree, R. V. Rachford, Cornelius W. McInerny, Jr.,
Frank L. Mulholland, C. M. Mulholland, and Willard H. McEwen
for protestants.

REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Johnson

By Division 4:

Exceptions to the report proposed by the examiner were filed. The Pacific Electric Railway Company on November 13, 1939, applied for permission (1) to abandon lines or parts of lines of railroads, hereinafter specifically described, aggregating about 88.11 miles, in Los Angeles, Orange, and Riverside Counties, Calif., and (2) to abandon operation, under trackage rights, over a line of the Union Pacific Railroad Company, approximately 8.47 miles, in Riverside and San Bernardino Counties, Calif. Protests were

filed by the Brotherhood of Railroad Trainmen and others, and a hearing was held, at which the Railroad Commission of California was represented by counsel.

This application is the result of a general program of rearrangement of the applicant's passenger service, involving abandonment of certain rail lines and substitution of motor coach transportation as a means of increasing operating revenues, reducing expenses, and rendering a more adequate service to the public. The engineering staff of the Railroad Commission of California made

a comprehensive survey of all phases of the applicant's operation, resulting in certain recommendations which, in the main, the applicant incorporated in its proposed plan. Portions of the plan have been approved in part by the State commission, while other parts are awaiting disposition by that body.

The applicant questions our jurisdiction over certain lines, hereinafter identified, used exclusively in local transportation of persons or property unrelated to interstate transportation, but physically connected with other lines of the applicant, forming a part of its railroad, and yielding gross operating revenues of more than \$1,000,000 for a 5-year period. All the applicant's capital stock, and a substantial portion of its bonds, are owned by the Southern Pacific Company, but the operations of each company are conducted separately. The Pacific Electric Railway is located wholly within the State of California and is operated in both interstate and intrastate commerce. We have heretofore taken jurisdiction of the operation of the applicant's railroad in proceedings before us under section 1 (18) of the Interstate Commerce Act. Unified Operation at Los Angeles Harbor, 150 I. C. C. 649, and Southern Pac. R. Co. Abandonment, 187 I. C. C. 410.

The present case does not involve cessation of all interstate operations. The result of any operation in intrastate commerce necessarily would be reflected in the applicant's income from operation of its entire railroad system and would or might impose an undue burden upon interstate commerce. Consequently our jurisdiction also extends to the operation of the lines handling the purely intrastate business. See Texas v. Eastern Texas R. Co., 258 U. S. 204, and Colorado v. United States, 271 U. S. 153.

The lines or portions of lines proposed to be abandoned, referred to collectively as the lines or segments, were constructed primarily for interurban passenger and freight service and, excepting the line operated under trackage rights, are the properties of the applicant, practically all having been acquired in 1911. Rail connections are effected with other lines of the applicant, but

other than with two of the segments, there are no connections with other railroads. The lines, for the most part, are in a fair state of maintenance. Their total salvage value is estimated at approximately \$504,249.

Operations of most of the segments are conducted between Los Angeles and adjoining areas handling passenger traffic almost exclusively, and serving principally a densely populated territory largely residential in character. Daily passenger service is rendered, and in most cases at frequent intervals during the day. Service for the small volume of freight available is ordinarily furnished on demand. Many of the lines are without freight or passenger stations. In most cases the segments are closely paralleled by main highways and intersected by numerous secondary routes and city streets. In some instances the tracks are located on paved streets, in which case the applicant is required to maintain the paving between the tracks and two feet on each side. In the event of abandonment the applicant proposes to substitute motor transportation for the rail service, except where otherwise hereinafter indicated.

The lines involved are as follows:

1. Venice short line and the Echo Park Avenue line.

The portion of the Venice short line commencing at Overland Avenue, milepost 10.26, to Pacific Avenue, Venice, thence northerly to Santa Monica Boulevard, Santa Monica, milepost 17.14, approximately 6.88 miles, and the Echo Park Avenue line extending from track connection in Sunset Boulevard at Echo Park Avenue, milepost 2.29, to the end of the line at Cerro Gordo Street, milepost 3.54, approximately 1.25 miles.

At the hearing the applicant withdrew the application insofar as it concerns both lines.

2. Sawtell line.

The portion extending from Sepulveda Boulevard, West Los Angeles, milepost 15.10, thence westerly on Santa Monica Boulevard to track connection on Ocean Avenue, Santa Monica, milepost 19.04, approximately 3.94 miles.

The Sawtell line, sometimes referred to as the Los Angeles-Santa Monica via Beverly Hills line, extends from Los Angeles to Santa Monica. The area served by the segment has a population of approximately 12,000. The number of passengers handled on the entire Sawtell line, including its Brentwood branch, hereinafter described, during the five years 1934-38 was 10,541,980, with corresponding revenues of \$1,312,860. The results of operation of the Sawtell segment for the 5-year period are shown as follows: System revenues from passenger traffic \$712,880, operating expenses \$175,198, cost of moving the traffic beyond the limits of the segment

\$364,360, taxes \$19,442, total expenses \$559,000, and profit from operation \$153,880, or, by years, in order, \$32,178, \$29,154, \$31,419, \$36,064, and \$25,065.

The segment is located on Santa Monica Boulevard, a paved street. Reconstruction of the track will be required within the next five years at an estimated cost of \$241,000. The equipment on this line was placed in service in 1908. It is unsatisfactory, obsolete, and badly undermaintained. To repair the equipment would require an expenditure of approximately \$2,000 a car, and it still would be old and unsatisfactory. The number of cars was not stated in this connection, but cost of maintenance of passenger cars was \$4,309 in 1938. To continue operation successfully, new or different rail equipment is believed essential. Because of the large expenditures required for reconstruction and the present condition of the equipment, the applicant states that it is compelled to seek abandonment of this segment, notwithstanding the favorable operating results. The applicant has another available rail route between Los Angeles and Santa Monica over its Venice short line.

42 3. Brentwood line.

Extending from track connection on Santa Monica Boulevard, West Los Angeles, milepost 15.51, to San Vicente Boulevard and Ocean Avenue, thence southerly on Ocean Avenue to Santa Monica Boulevard, Santa Monica, milepost 21.41, approximately 5.90 miles.

This segment, which is also part of the Los Angeles-Santa Monica via Beverly Hills line, serves an area of approximately 6,000 residents along San Vicente Boulevard. The results of operation of the segment for the five years 1934-38 according to the applicant's exhibits are as follows: System passenger revenue \$164,105, operating expenses \$187,451, cost of moving the traffic beyond the segment \$84,254, taxes \$43,984, total expenses \$315,689, and loss from operation \$151,584, or, by years, in order, \$19,912, \$26,712, \$31,845, \$34,122, and \$38,993. Operations of the bus service proposed to be substituted will be conducted by the Los Angeles Motor Coach Company, of which the applicant owns 30 percent of the stock.

4. Western and Franklin Avenue line.

Extending from track connection in Santa Monica Boulevard at Western Avenue, milepost 5.85, to track connection at Vine Street, Hollywood, milepost 8.10, approximately 2.25 miles.

This segment provides a shuttle service for an area in the Hollywood district having a population of approximately 7,500, and handles intrastate traffic only. Passengers carried in the five years 1934-38 aggregated 5,885,220. The results of operation for the

5-year period are indicated as follows: Passenger revenues \$245,815, operating expenses \$125,043, taxes \$10,552, total expenses \$135,595, and profit from operation \$110,220, or, by years, in order, \$17,959, \$19,702, \$27,153, \$27,601, and \$17,805. Operations are conducted partly on Franklin Avenue, a very narrow street. The rail service according to the applicant's witness is objectionable to the residents along the street and to the city of Los Angeles. Decision to seek elimination of this segment, notwithstanding its profitable operation, was prompted largely by the wishes of the city officials to have a motor coach service substituted for the rail service.

5. Venice freight line.

Extending from track connection at Pacific Avenue near Windward Avenue, Venice, to connection with the Venice short line, also portion connecting with the applicant's Inglewood line near Washington Boulevard, a total of approximately 0.88 mile.

No traffic has been handled on this segment during the past five years. The track has been used largely for storage purposes. For the five years 1934-38 expenditures for maintenance of way and structures amounted to \$5,109 and taxes to \$8,751, or a total loss of \$13,860. No substitution in service is contemplated in connection with this line.

43 6. Redondo Beach via Playa del Rey.

Extending from rail crossing at or near Alla, milepost 13.25, through Playa del Rey, to Diamond Street and Pacific Avenue, Redondo Beach, milepost 23.73, approximately 10.48 miles.

This segment forms a part of the Los Angeles-Redondo Beach via Playa del Rey line extending from Los Angeles to Redondo Beach. It serves an area primarily residential, having approximately 25,000 inhabitants. The freight stations on the segment are Playa del Rey, Hyperion, El Segundo Wharf, Manhattan Beach, Hermosa Beach, and Redondo Beach. The stations have no other railroad service, except the three last mentioned, which are also served by the Atchison, Topeka & Santa Fe Railway. Other than Redondo Beach, the stations are nonagency.

The passenger traffic handled on the entire Los Angeles-Redondo Beach via Playa del Rey line for the five years 1934-38 amounted to 2,831,262 passengers, with corresponding revenues of \$578,915. Carload traffic transported on the segment during the period mentioned aggregated 95 cars, while the tonnage of less-than-carload freight was negligible. The results of operation of the segment for the 5-year period are shown as follows: System operating revenues \$455,758, operating expenses \$292,825, cost of moving the traffic beyond the segment \$144,687, taxes \$101,474, total expenses \$538,986, and loss from operation \$83,228, or, by years, in order, \$6,849, \$22,161, \$19,815, \$19,585, and \$14,818.

7. Redondo Beach via Gardena line.

Extending from Arlington Avenue, Moneta, milepost 15.15, to end of line at point south of Avenue I, Redondo Beach, milepost 22.16, approximately 7.01 miles.

This segment is part of the Los Angeles-Redondo Beach via Gardena line which extends from Los Angeles to Redondo Beach. The area served is principally residential and has a population of approximately 14,000, of whom 12,000 reside at Redondo Beach, already included in the population indicated for the Redondo Beach via Playa del Rey line. The freight stations on the segment are Bridgedale, La Fresa, Perry, El Nido, and Clifton, all of which are nonagency stations and are without other railroad service. A passenger station is located in Redondo Beach.

The passenger traffic handled on the entire Los Angeles-Redondo Beach via Gardena line for the five years 1934-38 amounted to 1,737,698 passengers, with corresponding revenues of \$294,408. Carload freight moving over the segment for the same period aggregated 186 cars. The results of operation of the segment for the 5-year period are indicated as follow: System revenues \$165,869, operating expenses \$142,461, cost of moving the traffic beyond the segment \$89,211, taxes \$56,090, total expenses \$287,762, and loss from operation \$121,893, or, by years, in order, \$17,799, \$22,802, \$23,068, \$31,165, and \$27,059.

44 ° In the event of abandonment no substituted service is contemplated, other than for the handling of less-than-carload freight or express by motor truck to and from most points along the segment. Motor common-carriers operate in this area.

8. Long Beach local lines.

(a) Pine Avenue line. Extending from track connection in Ocean Boulevard and Pine Avenue to track connection in American Avenue north of Fourteenth Street, approximately 1.37 miles.

(b) Pacific Avenue loop line. Extending from track connection in Ocean Boulevard and Pacific Avenue to track connections at First Street and Pine Avenue, 0.15 mile.

(c) Seventh Street line. Extending from track connection in Pine Avenue and Seventh Street to track connection in Redondo Avenue, approximately 2.32 miles.

(d) Seal Beach line. Extending from track connection in Pine Avenue and Third Street, Long Beach, to a connection with Newport Beach line, Seal Beach, approximately 5.85 miles.

(e) Redondo Avenue line. Extending from a point north of the north line of Eleventh Street to a connection with the Seal Beach line between First and Second Streets, also track on

Broadway from Redondo Avenue to a connection with the Seal Beach line in Paloma Avenue, approximately 1.49 miles.

(f) Alamitos Extension and East Second Street line. Extending from track connection with the Seal Beach line at Thirty-ninth Place to connection with the Newport Beach line at Second Street and Appian Way, approximately 1.83 miles.

The Long Beach local lines serve an area having approximately 34,400 inhabitants, rendering passenger service only. Other than the Seal Beach line, the segments are devoted exclusively to the transportation of intrastate traffic. Passengers handled on the segments during the five years 1934-38 totaled 13,208,341. The results of operation for the same period are shown as follows: System operating revenues \$636,694, railway operating expenses \$560,494, taxes \$73,774, total expenses \$634,268, and profit from operation \$2,426, or, by years, in order, \$6,425, \$2,395, \$10,901, \$56, and \$17,351 (loss).

The Seventh Street line and the Seal Beach line will require expenditures within the next five years estimated at \$158,000 and \$134,700, respectively, for reconstruction and paving. There is no proposal to substitute for the rail service other forms of transportation. Long Beach at present is provided with local motor coach service by the Lang Motor Bus Company, which for the most part supplies the local bus transportation. Other rail lines of the applicant between Los Angeles and Long Beach will continue in operation. Independent bus operators have made application to operate a motor coach service in substitution for the service now provided by the rail lines proposed to be abandoned.

45 9. Newport Beach line.

Extending from Twenty-first Street, Newport Beach, milepost 37.88, to end of line at A Street, Balboa, milepost 39.64, approximately 1.76 miles.

This segment, which is part of the Los Angeles-Newport Beach line extending from Los Angeles to Balboa, serves a territory with a population of approximately 5,000 inhabitants. The passenger traffic on the entire Los Angeles-Newport Beach-Balboa line for the five years 1934-38 amounted to 975,278 passengers, with corresponding revenues of \$331,002. One carload shipment was made on the segment during the period, and the less-than-carload traffic was negligible. The results of operation for the same period are shown as follows: System operating revenues \$73,420, operating expenses \$16,268, cost of moving the traffic beyond the segment \$46,969, taxes \$23,208, total expenses \$86,445, and loss from operation \$13,025, or, by years, in order, \$1,201 (profit), \$2,607, \$3,420, \$3,510, and \$4,689.

10. La Habra line.

Extending from a point near Mountain View Avenue, Yorba Linda, milepost 30.66, to end of line at Stein, milepost 32.01, approximately 1.35 miles.

This segment serves an area of approximately 2,000 inhabitants. No traffic has been handled on the line for the past five years. For the five years 1934-38 expenditures for maintenance of way and structures amounted to \$3,151 and taxes \$1,347, or a total loss of \$4,588. No substitution for the rail service is proposed. The area would be served from Yorba Linda.

11. Rialto-Riverside line.

(a) Extending from a point in Riverside Avenue, Rialto, milepost 53.13, to Houghton Avenue, Riverside, milepost 61.60, approximately 8.47 miles.

(b) Extending from Houghton Avenue, Riverside, milepost 61.60, to First Street, milepost 61.77, approximately 0.17 mile.

These segments form part of the Los Angeles-Pomona-Riverside-San Bernardino line extending from Los Angeles to San Bernardino and Riverside. The Rialto-Riverside line described in bracket (a) is owned by the Union Pacific Railroad Company but has been operated for passenger service by the applicant, under trackage rights, since 1915. Abandonment of operation only of this segment is sought.

The population of the territory served by both segments is approximately 37,500. There is a nonagency freight station located at Poole on the line operated under trackage rights, not far from

Rialto, which is an interchange point with the Union Pacific Railroad. A passenger station is located on the line at

Riverside. The population of Riverside is approximately 35,000, and it is also served by the Union Pacific Railroad, the Atchison, Topeka & Santa Fe Railroad, and the Southern Pacific Railway. The applicant does not serve intermediate points on the Rialto-Riverside line, as operation is restricted to through service.

The passenger traffic handled during the five years 1934-38 on the entire Los Angeles-Pomona-Riverside-San Bernardino line amounted to 5,521,951 passengers, with corresponding revenues of \$1,763,456. Freight service on the segment is conducted between Rialto and Poole only. Carload traffic handled during the 5-year period amounted to 3,051 cars.

The results of operation of the segments for the 5-year period are indicated as follows: System operating revenues, \$222,073; operating expenses, \$201,413; cost of moving the traffic beyond the segments, \$127,346; taxes, \$7,029; total expenses, \$335,788; and loss from operation, \$113,715; or, by years, in order, \$25,744, \$20,169, \$20,508, \$24,941, and \$22,353. For the past four years the freight revenues slightly exceeded the passenger revenues. No form of

transportation would be substituted for the passenger service, resulting in no direct rail service between Riverside and Rialto, but rail connections would still be available by way of San Bernardino. The freight service will be conducted by the Union Pacific Railroad.

12. Pasadena local lines.

(a) Altadena line, extending from Walnut Street and Fair Oaks Avenue, Pasadena, to track connection on Lake Avenue and Mariposa Street, Altadena, approximately 4 miles.

(b) Lincoln Avenue line extending from Fair Oaks and Lincoln Avenues to end of line at Montana Street, approximately 2.30 miles.

(c) East Colorado Street line, extending from track turn-out to tracks in Lake Avenue at Colorado Street and Lake Avenue to the end of line at Daisy Avenue, Lamanda Park, approximately 2.27 miles.

(d) Lake Avenue line, extending from track turn-out to tracks on Colorado Street at Colorado Street and Lake Avenue to track connection at Mariposa Street and Lake Avenue, Altadena, approximately 2.94 miles.

The Pasadena local lines serve, in passenger service only, an area having approximately 22,700 inhabitants. Transportation is limited to intrastate traffic. Passengers handled on the lines during the five years 1934-38 totaled 19,126,239. The results of operation for the same period are indicated as follows: System railway operating revenues, \$971,029; railway operating expenses, \$655,227; taxes, \$49,509; total expenses, \$704,736; and profit from operation, \$266,293; or, by years, in order, \$58,298, \$44,176, \$60,677,

47 \$57,304, and \$45,838. The Altadena line, the Lincoln Avenue line, and the Lake Avenue line will require, within the next five years, expenditures of approximately \$73,700, \$73,500, and \$185,700, respectively, for reconstruction and paving.

13. Burbank line

Extending from Cypress Avenue, Burbank, milepost 12.91, to end of line at Eton Drive, milepost 13.93, approximately 1.02 miles.

This segment, which serves an area with a population of approximately 250, is part of the Los Angeles-Glendale-Burbank lines operating between Los Angeles and Burbank.

The passenger traffic handled on the entire Los Angeles-Glendale-Burbank line during the five years 1934-38 aggregated 17,348,508 passengers, with corresponding revenues of \$1,847,083. Freight handled on the segment for the period mentioned amounted to 105 carloads. The result of operation are indicated as follows: System railway operating revenues \$8,261, railway operating expenses

\$11,675, cost of moving the traffic beyond the segment \$823, taxes \$1,700, total expenses \$14,198, and loss from operation \$5,937, or, by years, in order, \$2,192, \$1,807, \$491, \$911, and \$535. In the event of abandonment no substitution in service is contemplated. The area would be served from Burbank.

14. Edendale line

Extending from a point in East Sixth Street near San Pedro Street, milepost 0.32, to the end of the line south of Fourth Street and easterly of Central Avenue, Los Angeles, milepost 0.92, approximately 0.60 mile.

The segment serves an area having a population of approximately 1,250 inhabitants and is part of the Edendale line which operates in Los Angeles, a distance of approximately 6 miles. The city of Los Angeles has refused to renew the franchise for operation over certain portions of the Edendale line. Continued operation of the segment would necessitate a change in route.

The passenger traffic handled on the entire Edendale line during the five years 1934-38 amounted to 13,266,032 passengers, with corresponding revenues of \$612,171. The results of operation of the segment for the period indicated are as follows: System operating revenues \$37,221, railway operating expenses \$59,854, cost of moving the traffic beyond the segment \$27,917, taxes \$2,475, total expenses \$90,246, and loss from operation \$53,025, or, by years, in order, \$9,924, \$10,653, \$10,591, \$9,799, and \$12,058. An expenditure of \$13,240 would be required within a short time for reconstruction and resurfacing of the track. It is not contemplated to substitute transportation service for that proposed to be discontinued.

15. San Fernando line, also Owensmouth line

Extending from a point on the San Fernando line south of Wyandotte Street, milepost 20.62, to a point on the north side of Chatsworth Street, milepost 25.75, approximately 5.13 miles; also from a point in the Hollywood-Van Nuys line south of Wyandotte Street, milepost 20.33, to the end of the line west of Topanga Canyon Avenue, milepost 29.54, approximately 9.21 miles.

These segments serve an area containing approximately 17,000 inhabitants and are part of the Los Angeles-Van Nuys-San Fernando-Canoga Park line operating between Los Angeles, Canoga Park, and San Fernando. Freight stations on the San Fernando segment are Wyandotte, Mission Acres, and Plummer, all non-agency stations. The freight stations on the Owensmouth line are Picover, Hanna, Reseda, and Canoga Park, all of which are non-

agency stations. The last named is served also by the Southern Pacific Company.

Passenger traffic handled on the entire line for the four years 1934-37 and the first five months of 1938 amounted to 2,927,068 passengers; with corresponding revenues of \$598,567. On June 1, 1938, motor coach service was substituted for the rail passenger service. Freight moving during the five years 1934-38* amounted to 650 cars between points on the segments and points beyond; and 1,372 cars of overhead or bridge traffic.* The results of operation of the segments are indicated as follows: System railway operating revenues \$140,781, railway operating expenses \$202,747, cost of moving the traffic beyond the segment \$61,922, taxes \$23,537, total expenses \$288,206, and loss from operation \$147,425, or, by years, in order \$20,503, \$30,588, \$30,495, \$34,588, and \$31,251. The applicant would substitute motor truck transportation for the freight service proposed to be abandoned.

16. Mount Lowe line

Extending from Lake Avenue and Mariposa Street, Altadena, milepost 15.44, to the end of the line at Mount Lowe Tavern, milepost 21.20, approximately 5.76 miles.

This segment, devoted to intrastate transportation exclusively, serves an area containing approximately 500 inhabitants. The passenger traffic thereon for the four years 1934-37 amounted to 249,054 passengers, with corresponding revenues of \$108,260. The amount of freight handled was negligible. The results of operation for 1934, 1935, and the first nine months of 1936 are indicated as follows: System railway operating revenues, excluding freight revenues, \$103,333, operating expenses \$50,237, cost of moving the traffic beyond the segment \$34,347, taxes \$8,044, total expenses \$92,628, and profit from operation \$10,705, or, by years, in order, \$2,562, \$2,312, and \$5,831. The passenger service was discontinued in February 1938, and no rail service has been rendered since. This line was operated to serve principally Mount Lowe Tavern, which burned in 1936 and has not been rebuilt. No service would be substituted for that proposed to be abandoned, as the traffic available does not warrant it. The nearest rail service would be at Pasadena, about 2.25 miles.

The foregoing individual description covers all of the lines under consideration. Referring now to the segments generally, the evidence shows that the passenger revenues were derived almost entirely from traffic local to the applicant's line. No information is available as to interline passenger traffic. In determining the

*Since August 1938, the overhead traffic has been transported over another track.

operating results, each segment was credited with the entire system revenues from all traffic handled thereon. The operating expenses were apportioned, for the most part, on a mileage basis. Some charges for maintenance of way and structures were prorated on the basis of actual expenses incurred. Where it is proposed to abandon an entire line, no charge is made to cover the cost of moving the traffic beyond the segment, as practically all traffic handled was local to the line. Where a portion of a line is involved, an estimate was made of the total cost of operating the section of the line beyond the segment based on costs derived on a car-mile basis, and of that estimated sum a portion was charged to the segment for handling the traffic beyond in the same ratio as the segment revenue from traffic other than local bears to the revenue of the entire line. For instance, in the case of the Santa Monica-Beverly Hills line, the 1938 revenue from segment traffic moving beyond was \$140,521, or 52.13 percent of \$269,558, the total line revenue. The total estimated cost of operating the section of line beyond the point proposed to be abandoned is \$150,960, so that the proportional amount charged for handling the traffic beyond the segment is 52.13 percent of that amount, or \$78,695. The principal tax charged was an ad valorem tax based on the assessed values of the properties.

The applicant's income accounts for the past 15 years indicate that operations of the entire railroad have resulted in substantial net losses. During the period 1927-33 railway operating revenues declined from approximately \$19,000,000 to about \$9,000,000. The revenues for the last four years have fluctuated between \$10,000,000 and \$11,000,000. Expenditures for maintenance of way and structures for each of the last nine years have been approximately but half, or less, of the amount appropriated for that purpose in 1927, resulting in the accrual of large amounts of deferred maintenance. It was stated that on that account there is urgent need of material increases in expenditures for maintenance if the applicant's lines are to be kept in operation and render satisfactory service to the public. For the past eight years the applicant has incurred deficits in net railway operating income ranging from \$17,743 in 1936 to \$826,505 in 1938, and a deficit of \$608,989 in 1939.

50 The Southern Pacific Company from time to time has made advances to the applicant for capital additions and betterments, for operating expenses when not earned, and for the payment of interest on the outstanding bonds held by the public. The applicant is indebted in open account to the Southern Pacific to the extent of approximately \$50,000,000. According to estimates made by the State commission in proceedings before it, the gross revenues received by the Southern Pacific on freight inter-

changed with the Pacific Electric Company, in 1937 amounted to \$4,591,417, resulting in a profit of \$1,836,567, if the out-of-pocket cost of handling the business is based on 60 percent of the gross revenues, and \$1,377,425 if the cost is based on 70 percent. It was estimated that in the absence of the present corporate relationship between the Southern Pacific and the applicant the former's gross revenue from the latter's traffic would be more than \$1,000,000 less than under existing affiliations. It was also estimated that the Atchison, Topeka & Santa Fe Railway Company's share of the freight moving to or from the lines of the Pacific Electric was \$662,019, while that of the Union Pacific amounted to approximately \$1,000,000.

Future expenses, if the segments are continued in operation as at present, for ordinary maintenance of way and structures are expected to increase in the next seven years from \$79,906 in 1940 to \$190,894 in 1944 and each year thereafter, exclusive of an expenditure of \$866,600 within the next five years for reconstruction of tracks and paving of city streets. The proposed abandonments would eliminate expenses in maintenance of way, including expenses for reconstruction and paving, averaging about \$303,400 a year for a 7-year period. The cost of maintaining way and structures of the entire railroad if present operations continue without change would average approximately \$1,897,284 a year, based on the same number of years.

In advocating the proposed program of rearrangement the applicant states that it was not motivated by the excessive cost of rehabilitating the rail equipment, as its cost is practically the same as that for motor coaches, but rather by the expenditures which would be required for maintenance and rehabilitation of the line itself and the public preference for motor transportation. Based upon studies begun in 1935 and completed in August 1939, it concluded that the proposed abandonments, substitutions, and changes would result in an increased net operating benefit of \$1,199,022 a year. The studies embrace changes not yet presented either to this commission or to the State commission. It is stated that in arriving at the increased net operating benefit consideration was given to deferred maintenance, depreciation of equipment, increased revenue as the result of the elimination of the unprofitable segments, improvement in service, and operating savings in power, equipment, maintenance, and taxes.

Comparisons of the present rail operations with the proposed operations in connection with the main segments have been submitted. Where the segment is part of a line, the cost of operation embraces the entire line, as well as its corresponding motor service. Where dual operation is performed, the

expenses of the portion jointly used are prorated. The estimate shows revenues, out-of-pocket expenses, and net out-of-pocket profit or loss under (a) present rail operation, (b) continued rail operations with present equipment and type of service based on a 5-year average, and (c) the proposed motor operation. The rail out-of-pocket cost consists principally of expenses for maintenance of way and structures, maintenance of equipment, power, wages of trainmen, cleaning and lubricating cars, and taxes. The aggregate net out-of-pocket profit or loss shown is a total profit of \$63,398 under present rail operations, a deficit of \$131,176 under continued rail operation, and a profit of \$441,927 under the proposed motor coach service, or a gain under proposed over present operations of \$378,229. The estimate, according to the witness, is based upon the theory that rail operating revenues will decrease in the next five years and expenses of maintenance of way and structures will increase. The motor-coach operations are estimates based on the applicant's experience in that field.

The Railway Labor Executives' Association and the Brotherhood of Railroad Trainmen are the only protestants showing active opposition to the granting of the application. No witnesses appeared in their behalf. Counsel for the labor organizations submitted a copy of an agreement between the applicant and the Brotherhood of Railroad Trainmen relative to rates of pay, working conditions, and other incidental matters, and also a copy of what is known as the job protective agreement entitled "Agreement of May 1936, Washington, D. C.," entered into between a large number of railroad companies, exclusive of the applicant, and railway labor executives.

The labor organizations, at times hereinafter referred to as the protestants, contend that the operation of motor busses under the proposed plan will aggravate an already acute traffic congestion on the highways, particularly in and about the City of Los Angeles, the rail operations being conducted to a large extent over privately owned rights-of-way.

It is conceded by the protestants that the proposed abandonment would strengthen the operating and financial position of the applicant and its parent company, the Southern Pacific, but they contend that the plan would be effected largely at the expense of employees. The protestants estimate the profit to the Southern Pacific from freight traffic interchanged with the Pacific Electric at \$160,353 a year. The estimate is arrived at by using the 1937 profit of \$1,836,567 and deducting therefrom \$1,676,214, which represents the interest paid by the Southern Pacific on the applicant's bonded debt. The latter figure was determined by subtracting from the applicant's 1939 deficit in net income of \$2,918,734 a sum equal to 52 percent of \$2,289,462 charged to interest on funded debt in

30. The protestants conclude that this whole program of rearrangement is for the benefit of the Southern Pacific.

2 In 1936 the applicant's force of employees was reduced from about 7,500 to 3,500 men. The number employed at present is approximately 4,000. The rehabilitation program is expected to result in an increase in employment, but if it should cause displacement of train-service employees the applicant is unwilling to pay compensation for loss of employment. However, an effort would be made to replace any such employee in other departments, wherever possible, until such time as employment would become available in the transportation department. Of approximately 32 men recently displaced because of reduction in service in Long Beach and discontinuance of service on the Gardena-Redondo line, and the Torrance branch, 15 men are at present out of employment, but the applicant expects to reinstate them during the current year. The Sawtell segment is operated by approximately 50 motormen and conductors, one-half of whom would be removed from their present positions under the rearrangement program. There will be removals from other segments as well, in numbers unknown at present. Nevertheless the applicant anticipates absorption of all displaced employees in the ordinary turnover resulting from death, retirement, disability, and resignation. Some will qualify as motor bus operators. All these anticipations are based largely on past experiences.

Exhibits submitted by the applicant show the ages of trainmen and motor coach operators, seniority of train service employees, rate of pay to train and motor coach service employees, skilled shop labor, and construction and maintenance-of-way forces. Of the trainmen and motor coach operators 454 are under 40 years of age, 81 are 40 years and over, 406 are 50 years and over, and 102 are 60 years and over. Based on information contained therein, the protestants estimate that of the train-service employees, 19 have seniority of less than one year, 317 have one year and less than 10 years, 307 have 10 years and less than 15 years, and, 843 have 15 years and over. The hourly rate of pay to train and motor coach service employees since October 1, 1937, has ranged from 63.5 cents to 99.7 cents.

Other estimates of the protestants, also based on information submitted by the applicant, show that wages to rail motor men and conductors would be reduced to the extent of \$290,968 annually, while wages of motor coach drivers will increase by \$79,599 a year, resulting in a net annual loss of wages of train and bus operators of \$211,369; and that additional wage losses would occur in the maintenance of way and maintenance of equipment departments, amounting to \$125,565, which would be offset by wage increases in truck operations of about \$34,938, or a net loss of \$90,627. Wages

in the maintenance departments were ascertained on the basis of certain percentages which, according to the applicant, represent the labor cost ranging from 60 to 70 percent of the total expenses in that field. According to the foregoing calculation, the aggregate saving of \$378,229 under the proposed plan includes a total of \$301,996 as the cost of labor.

In the event of abandonment the protestants seek the imposition of conditions for the protection of the interest of employees substantially like those imposed in Chicago, R. I. & G. Ry. Co. Trustees Lease, 230 I. C. C. 181; In Chicago G. W. R. Co. Trackage, 207 I. C. C. 315, the Commission held that it had no authority to attach conditions of that nature in abandonment proceedings. Counsel for the labor organizations contends that in view of the decision in United States v. Lowden, 308 U. S. 225, decided December 4, 1939, holding that the Commission has authority to impose conditions for the protection of railroad employees in proceedings under section 5 (4) of the Interstate Commerce Act, the conclusion reached in Chicago G. W. R. Co. Trackage, supra, is based on an incorrect application of the statute, and that the question of our jurisdiction in such matters should be reconsidered. The protestants argue that the Commission had disclaimed jurisdiction to impose conditions for the protection of employees in abandonment cases on the broad ground that such protection is not connected with "public convenience and necessity," while the Supreme Court has sustained the Commission's jurisdiction to impose similar conditions in consolidation or coordination cases on a similarly broad ground that such protection is a matter of "public interest," and that while the language used in section 1 (18-20) is not precisely the same as that in section 5 (4), there is no significant distinction in meaning between the two sections, the phrases "public convenience and necessity" in the one section and "public interest" in the other being of similar import. Counsel concludes that the results of abandonment of a portion of a railroad system, as in the instant proceeding, are comparable to those secured from a consolidation or coordination of railroads; that in the one case contemplated economies are expected to result from a rearrangement of available facilities in such a manner as to better meet public need, while the other case is predicated upon expected economies to be derived from the elimination of certain duplicated operations or facilities; that in both situations the application is based on the ground that the railroad and the public will benefit by the elimination of wasteful operations; and that in either case the elimination of operations results in loss of employment, so that any public benefit accruing to the carrier is acquired at the expense of a corresponding loss to the employees.

A similar contention was made in Chicago, S. & St. L. Ry. Co. Receiver Abandonment, 236 I. C. C. 765, Tonopah & T. R. Co. Abandonment, decided May 13, 1940, 240 I. C. C. 145, and other cases. In the latter case the Commission held that imposition of conditions for the protection of employees in abandonment proceedings is outside of the scope of its authority. We are unable to discern in the argument advanced by counsel for the protestants any considerations which would warrant us in departing from the determinations in those proceedings.

Under the proposed plan of rearrangement the public will continue to receive common-carrier transportation in cases where motor coach service will be substituted for that proposed to be discontinued. Where no substitution in service is contemplated, there is no apparent further public need for it. Substantial savings undoubtedly would be effected by the abandonments but probably not to the extent anticipated by the applicant. Under the circumstances, to continue operation of the lines herein permitted to be abandoned would impose an undue burden upon the applicant and upon interstate commerce.

54 We find that the present and future public convenience and necessity permit (1) abandonment by the Pacific Electric Railway Company of its lines or portions of lines of railroad in Los Angeles, Orange, and Riverside Counties, Calif., described herein, excepting the Venice short line, and the Echo Park Avenue line, as to which the application will be dismissed, and (2) abandonment of operation, under trackage rights, by the Pacific Electric Railway Company over the line of the Union Pacific Railroad Company in Riverside and San Bernardino Counties, in said State, also described herein. An appropriate certificate and order will be issued, effective from and after 40 days from its date, in which suitable provision will be made for the cancelation of tariffs.

PORTER, Commissioner, dissenting in part:

I agree with this report as to the abandonments authorized, but I have long been of the opinion that we have ample power to attach reasonable conditions for the protection of the employees in abandonment cases such as this one, and I believe we should do so here. I am reinforced, in my judgment, by the reasoning employed by the Supreme Court in the case of United States v. Lowden, 308 U. S. 225.

CERTIFICATE AND ORDER

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 28th day of August A. D. 1940.

Finance Docket No. 12643

PACIFIC ELECTRIC RAILWAY COMPANY ABANDONMENT

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit (1) abandonment by the Pacific Electric Railway Company of lines or portions of lines of railroad in Los Angeles, Orange, and Riverside Counties, Calif., excepting the so-called Venice short line and the Echo Park Avenue line, and (2) abandonment of operation, under trackage rights, by the Pacific Electric Railway Company over the line of the Union Pacific Railroad Company in Riverside and San Bernardino Counties, in said State; as described in the report aforesaid.

It is ordered, That this certificate shall take effect and be in force from and after 40 days from its date. Tariffs applicable on said lines of railroad may be canceled upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act.

It is further ordered, That the Pacific Electric Railway Company, when filing schedules canceling tariffs applicable on said lines of railroad, shall in such schedules refer to this certificate by title, date, and docket number.

It is further ordered, That the Pacific Electric Railway Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

And it is further ordered, That the part of the application seeking permission to abandon the Venice short line and the Echo Park Avenue line in said Los Angeles County be, and it is hereby, dismissed.

By the Commission, division 4.

[SEAL]

W. P. BARTEL, *Secretary*.

56

In United States District Court

[Title omitted.]

Summons

To the above-named Defendants:

You are hereby summoned and required to serve upon Edward C. Kriz, plaintiff's attorney, whose address is 1416 F Street NW., Washington, D. C., an answer to the complaint which is herewith served upon you, within sixty days after service of this summons

upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[SEAL OF COURT]

CHARLES E. STEWART,
Clerk of Court.

By C. B. COFLIN,
Deputy Clerk.

Date: November 8, 1940.

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

57

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the — day of — 19—, I received the within summons and copy of application for temporary suspension of Interstate Commerce Commission order.

(1) United States of America, by Edward M. Curran, U. S. Attorney, personally, November 9, 1940.

(2) Interstate Commerce Commission, by W. P. Bartel, Secretary, personally, November 12, 1940.

JOHN B. COLPOYS,
United States Marshal.

J. S. MCCARTHY,
By T. R. EAST,
Deputy United States Marshal.

L.

Marshal's fees: Travel, \$——. Service, \$1.00.

Subscribed and sworn to before me, a —, this — day of — 19—.

[SEAL]

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

58

District Court of the United States for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

Order

Filed Nov. 12, 1940

To the honorable the Chief Justice or Senior Associate Justice of the United States Court of Appeals for the District of Columbia:

A request having been duly made for the convening of a district Court of three judges to hear and dispose of the above-entitled

44 UNITED STATES VS. RAILWAY LABOR EXECUTIVES ASS'N

cause, and it appearing that, pursuant to the provisions of Title 28, Sect. 47, U. S. C. A., this cause is one which must be heard and disposed of by a district court of three judges, at least one of whom must be a circuit judge.

You are hereby requested to designate a justice or two justices of the United States Court of Appeals for the District of Columbia to sit on a district court of three judges to hear and dispose of the above-entitled cause.

ALFRED A. WHEAT,
*Chief Justice, District Court of the
United States for the District of Columbia.*

NOVEMBER 12, 1940.

**59 District Court of the United States for the
District of Columbia**

Civil Action No. 9011

**RAILWAY LABOR EXECUTIVES' ASSOCIATION ET AL., PLAINTIFFS VS.
UNITED STATES OF AMERICA ET AL., DEFENDANTS**

Filed Nov. 14, 1940

Order Convening Three-Judge Courts

Upon consideration of the Complaint heretofore filed herein, the application for a Temporary Suspension and other relief against the Order entered on the 28th day of August, 1940, by the Interstate Commerce Commission in a certain cause entitled Pacific Electric Railway Company Abandonment, numbered Finance Docket No. 12643 before said Commission, and it appearing to the Court that this action is one which comes within the purview of Title 28, Section 47, U. S. C. A., and on motion of counsel for plaintiffs, it is, by the Court, this 14th day of November, 1940:

Ordered, that there be, and hereby is, convened a three-judge Court under the terms and provisions of Title 28, Section 47, U. S. C. A., for the purpose of hearing and disposing of the above entitled cause. And it is further hereby:

Ordered, that I, Alfred A. Wheat, Chief Justice of the District Court of the United States for the District of Columbia, hereby call to my assistance to hear and consider this matter, Chief Justice D. Lawrence Groner, and Associate Justice Fred M. Vinson, of the United States Court of Appeals for the District of Columbia, heretofore designated by the Chief Justice of that Court to serve with me. And it is further hereby

Ordered, that the 25th day of November, 1940, at 10:30 o'clock A. M. be fixed as the time of said hearing, and the Court Room of the United States Court of Appeals for the District of Columbia, be fixed as the place where said matter shall be heard.

ALFRED A. WHEAT,
Chief Justice.

60

UNITED STATES COURT OF APPEALS,
FOR THE DISTRICT OF COLUMBIA,
Washington, D. C., November 13, 1940.

Joseph W. Stewart, Clerk. C. Newell Atkinson, Deputy Clerk
Civil No: 9011, Railroad Labor Executives Association v. United
States of America and Interstate Commerce Commission.

Colonel CHARLES E. STEWART,
*Clerk, District Court of the United States
for the District of Columbia,
Washington, D. C.*

MY DEAR COLONEL STEWART: I understand that the above entitled case is scheduled for hearing before a three-judge statutory court consisting of Chief Justice Groner, Judge Vinson, and Chief Justice Wheat, on November 25, 1940, at 10:30 a. m., in the courtroom of the United States Court of Appeals.

Sincerely yours,

JOSEPH W. STEWART,
Clerk.

Filed Nov. 14, 1940. Charles E. Stewart, Clerk.

J 422960 F 61 2

61 In the District Court of the United States for the
District of Columbia.

[Title omitted.]

[File endorsement omitted.]

Answer of the United States of America

Filed Nov. 18, 1940

Answering the complaint filed against it in this action the United States of America, defendant, says:

1. The allegations of paragraphs 1, 2, 3 and 5 are admitted.
2. For answer to paragraph 4 of the complaint the United States of America admits the following facts:

The Pacific Electric Railway Company on November 13, 1939, applied [to the Interstate Commerce Commission] for permission

(1) to abandon lines or parts of lines of railroad, hereinafter specifically described, aggregating about 88.11 miles in Los Angeles, Orange, and Riverside Counties, California, and (2) to abandon operation, under trackage rights, over a line of the Union Pacific Railroad Company, approximately 8.47 miles, in Riverside and San Bernardino Counties, California, * * *

This application is the result of a general program of rearrangement of the applicant's passenger service, involving abandonment of certain rail lines and substitution of motor coach transportation as a means of increasing operating revenues, reducing expenses, and rendering a more adequate service to the public.

3. For answer to paragraph 6 of the complaint the United States of America says that it has no knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained therein.

62 4. For answer to paragraph 7 of the complaint the United States of America admits that the Interstate Commerce Act contains, in section 1 (20), a provision substantially as quoted in said paragraph 7, but reference is made to the said section of the Act for the complete and correct provisions thereof. The United States of America is advised that all remaining statements contained in paragraph 7 are the plaintiff's statements and conclusions of law, which require no answer.

5. For answer to paragraph 8 of the complaint the United States of America admits the allegations of fact contained therein as to the proceedings before the Interstate Commerce Commission, but refers to the report of the said Commission dated August 28, 1940, which is attached to the complaint as Exhibit C, for a more complete statement of the said proceedings.

6. For answer to paragraph 9 of the complaint the United States of America admits that the Interstate Commerce Commission, acting through Division 4 thereof, duly considered the application of the Pacific Electric Railway Company, referred to in paragraph 2 above, and issued an order granting said application in part, and further admits that the said Commission refused to attach to the certificate of public convenience and necessity which it issued upon the aforesaid application any conditions for the protection of the employees of the applicant affected by the authorized abandonment of certain of applicant's lines of railroad and operating rights. The United States of America denies all other allegations of paragraph 9, and refers to the report and order of the Commission, attached to the com-

plaint as Exhibit C, for full, complete and accurate information as to the scope of the Commission's order and as to the Commission's reasons for its refusal, as aforesaid, to attach to the said order any conditions for the protection of the applicant's employees.

63 7. The United States of America denies the allegations of paragraphs 10, 11, and 12 of the complaint.

8. Except as herein expressly admitted the United States of America denies each and every allegation contained in the several sections of the complaint.

Wherefore, the defendant the United States of America prays that the complaint be dismissed at the cost of the plaintiffs, and for such other and further relief as may be proper.

S. R. BRITTINGHAM, Jr.,

S. R. Brittingham, Jr.,

Special Assistant to the Attorney General,

Department of Justice, Washington, D. C.,

Counsel for the United States.

THURMAN ARNOLD,

Assistant Attorney General.

FRANK COLEMAN,

Special Assistant to the Attorney General.

EDWARD M. CURRAN, Esq.,

United States Attorney.

I certify that a true copy of the foregoing Answer of the United States of America was this day mailed to the following persons:

E. M. REIDY, Esq.,

Interstate Commerce Commission,

Counsel for Interstate Commerce Commission.

EDWARD C. KRIZ, Esq.,

1416 F. Street, NW., Washington, D. C.

FRANK L. MULHOLLAND, Esq.,

CLARENCE W. MULHOLLAND, Esq.,

1041 Nicholas Building, Toledo, Ohio,

WILLARD H. McEWEN, Esq.,

1040 Nicholas Building, Toledo, Ohio,

Counsel for Plaintiffs.

S. R. BRITTINGHAM, Jr.,

S. R. Brittingham, Jr.,

Special Assistant to the Attorney General.

NOVEMBER 16, 1940.

64 In the District Court of the United States for the
District of Columbia

[Title omitted.]

[File endorsement omitted.]

Answer of Interstate Commerce Commission

Filed Nov. 25, 1940

The Interstate Commerce Commission, defendant in the above-entitled action, hereinafter referred to as the Commission, for answer unto so much or such parts of plaintiffs' bill of complaint as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs 1, 2, and 3, of the bill of complaint, the Commission admits the allegations thereof.

II

Answering paragraph 4 of the bill of complaint, the Commission respectfully refers the court to the Commission's report, attached to and made a part of the complaint as Exhibit C, for a more full and complete statement of the facts than is contained in said paragraph 4. To the extent that the allegations of said paragraph are inconsistent with the statements and findings contained in said report, the Commission denies them.

III

The Commission, in answer to the allegations of paragraph 5 of the bill of complaint, admits same.

IV

Answering paragraph 6 of the bill of complaint, the Commission disclaims information sufficient to form a belief as to the truth and accuracy thereof.

V

Answering paragraph 7 of the bill of complaint, the Commission admits that the provisions of paragraph (20) of Section 1 of the Interstate Commerce Act, in part, are accurately set forth therein. The Commission alleges that the remaining allegations contained in said paragraph 7 require no answer, being conclusions of law.

VI

Answering paragraph 8 of the bill of complaint, the Commission admits the allegations thereof, but for a more full and complete statement of the facts, respectfully refers the court to its report and certificate, made a part of the complaint as Exhibit C.

66

VII

Answering paragraph 9 of the bill of complaint, the Commission admits the consideration and decision by Division 4 of the application therein referred to. As reasons for its refusal to attach to its report the conditions referred to, the Commission respectfully refers the court to Exhibit C to the bill of complaint, its decision in this proceeding, for a more full and complete answer to the allegations of this paragraph. The Commission denies that its action was erroneous or unlawful in any respect.

VIII

Answering the allegations of paragraph 10 of the bill of complaint, the Commission denies said allegations.

IX

Answering the allegations of paragraph 11, the Commission admits that said plaintiffs and the employees they represented appeared before the Commission in this proceeding and were fully heard. The other allegations of said paragraph are denied.

X

Answering the allegations of paragraph 12 of the bill of complaint, the Commission admits that plaintiffs applied to the Commission for a rehearing of the decision of Division 4, which petition was denied by the entire Commission. The Commission denies the other allegations of the paragraph.

67

XI

Further answering the allegations of the bill of complaint, the Commission alleges that at the hearings held on the application referred to in paragraph 5 of the bill of complaint, the Commission considered testimony and other evidence submitted on behalf of the plaintiffs herein by counsel for said plaintiffs; that at said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of

said parties by their respective counsel, including questions raised by plaintiffs in this action, whereupon the Commission determined said matters and entered and duly served upon the plaintiffs herein, and upon other interested parties, its report and certificate, Exhibit C to the bill of complaint.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

68 Answering the allegations of the bill of complaint, the Commission denies that in issuing its report and certificate hereinbefore referred to, it exceeded its statutory power or acted arbitrarily, unreasonably or erroneously in any respect. The Commission denies that its said report and certificate are invalid for the reasons set out in said bill of complaint, or for any other reason.

Further answering the allegations of the bill of complaint, the Commission denies that plaintiffs will suffer irreparable injury as a result of the Commission's decision in this proceeding.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and certificate, hereinbefore referred to.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By E. M. REIDY.

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

69 [Duly Sworn to by Joseph Eastman; jurat omitted in printing.]

70

In the District Court of the United States
for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

Order permitting intervention

Filed March 15, 1941

It appearing that Pacific Electric Railway Company is a party in interest in the above-entitled matter, having been the applicant in Finance Docket 12643, Pacific Electric Railway Company Abandonment, the proceeding before the Interstate Commerce Commission out of which this action grew and the order in which proceeding is herein attacked; and it appearing that on November 25, 1940, in open court said Pacific Electric Railway Company by counsel requested, and the court granted, leave to intervene and to file answer herein as a defendant by intervention and to participate in the hearing and argument herein, and it further appearing that Pacific Electric Railway Company is entitled under Judicial Code, Title 28, Section 45a, of the U. S. Code and under the Rules for Civil Procedure for the District Courts of the United States to intervene and be treated as a party defendant herein;

It is ordered, that said Pacific Electric Railway Company be, and it is hereby, permitted to intervene herein as a party defendant.

D. LAWRENCE GRONER,

*Chief Justice, Court of Appeals
for the District of Columbia.*

MARCH 15th, 1941.

71 Copy of the order permitting intervention and Mr. Bell's letter of March 14, 1941, to Chief Justice Groner, is received and the undersigned consent to the entry of the order as requested as of November 25, 1940.

EDWARD C. KRIZ,

Counsel for Plaintiffs.

SMITH R. BRITTINGHAM, Jr.,

Counsel for the United States.

E. M. REIDY,

Counsel for Interstate Commerce Commission.

Dated at Washington, D. C., March 14, 1941.

SOUTHERN PACIFIC COMPANY,
LAW DEPARTMENT, 205 TRANSPORTATION BUILDING,
Washington D. C., March 14, 1941.

J. R. Bell, General Attorney and Commerce Counsel

G. H. Muckley, Assistant General Attorney

Civil Action No. 9011—Railway Labor Executives' Association
et al. v. United States of America et al.

HON. D. LAWRENCE GRONER,

Chief Justice, United States Court of Appeals,
Washington, D. C.

DEAR JUDGE GRONER: On November 25, 1940, the above case was heard by you and Justices Vinson and Wheat, sitting at a statutory court. Opinion was handed down on March 6, 1941. Upon investigation of the record in considering the possibility of appeal to the United States Supreme Court, it was found that the record does not show that permission was granted the Pacific Electric Railway Company to intervene as a defendant.

At the hearing Mr. Frank Karr, General Counsel of the Pacific Electric Railway Company, residing at Los Angeles, California, asked leave in open court on behalf of the Pacific Electric Railway Company to intervene as a defendant, to file an answer, and to participate in the hearing and argument. This request was granted and Mr. Karr did file an answer on November 25, 1940, as shown by the journal entry of the Clerk of the court. You will no doubt recall that Mr. Karr also made an oral argument.

The record, however, does not show the entry of an order
73 permitting the intervention, due no doubt to the fact that no written order was presented to the court at the time. So that the record will definitely show the fact that the Pacific Electric Railway Company was permitted to intervene as a defendant, it is respectfully requested that the attached order be entered as of November 25, 1940, the date the intervention actually was permitted in open court and the date the case was heard.

Copy of this letter and the attached order have been sent to counsel for plaintiffs, Mr. Edward C. Kriz, to Mr. S. R. Brittingham, Jr., Special Assistant to the Attorney General, counsel for the United States, and to Mr. E. M. Reidy, Assistant Chief Counsel of the Interstate Commerce Commission, who have signified their approval of the entry of this order by their O. K. which is attached to the order.

Very truly yours,

J. R. BELL.

Encl.

cc—Messrs. Edward C. Kriz, S. R. Brittingham, Jr., E. M. Reidy.

74 In the United States District Court for the District
of Columbia

[Title omitted.]

[File endorsement omitted.]

*Answer of defendant in intervention, Pacific Electric Railway
Company*

Filed Nov. 25, 1940

Comes now the defendant in intervention, Pacific Electric
Railway Company, a corporation, and in answer to plaintiffs'
complaint admits, denies, and alleges as follows:

I

75 That defendant, in intervention, Pacific Electric Railway Com-
pany, is a corporation duly incorporated and consolidated
under and by virtue of the laws of the State of California,
having its principal place of business in the City of Los
Angeles, County of Los Angeles, State of California.

II

This defendant admits the allegations of paragraph 1, para-
graph 2, paragraph 3, paragraph 5, and paragraph 8 of plain-
tiffs' complaint.

III

Answer paragraph 4 of plaintiff's complaint, this defendant
averts that for some years prior to the filing on November 13,
1939, its application for abandonment of the lines of railroad
referred to in Finance Docket No. 12643 before the Interstate
Commerce Commission and entitled "Pacific Electric Railway
Company Abandonment," this defendant Pacific Electric Railway
Company operated its railroad at substantial losses, as is more
particularly shown in the sheet entitled "Pacific Electric Railway
Company Exhibit of Net Income and Operating Statistics Years
1925 to 1939, Inclusive", hereto attached and by reference made
a part hereof, and marked "Exhibit A"; and this defendant, in
an attempt to place itself in a position where it would earn its
operating expenses and if possible avoid a bankruptcy or reor-
ganization proceeding, prepared a rehabilitation program which
was designed to reduce the losses theretofore incurred, and in
carrying out said rehabilitation program reduced and in some
instances discontinued passenger rail service over some of its
lines, and in other instances sought to abandon certain rail lines

entirely as alleged in plaintiffs' complaint, in other instances installed motor coach service on lines where rail service was reduced but not discontinued, in other instances installed motor coach service in lieu of rail service discontinued on lines not sought to be abandoned, in other instances substituted motor coach service for reduced passenger service on the lines authorized to be abandoned which will not be resumed on such rail lines which have been authorized by the Interstate Commerce Commission to be abandoned. Defendant admits that said plan did not contemplate the withdrawal of Pacific Electric Railway Company entirely from passenger service, but in the instances hereinbefore referred to, motor coach service is substituted for the rail passenger traffic theretofore handled.

IV

Answering paragraph 6 of plaintiffs' complaint, this defendant denies that its employees will experience, as a result of abandonments authorized by the Interstate Commerce Commission in this case, an annual net wage loss to the extent of approximately \$301,896.10, or any other sum in excess of \$1,000.00 per month for a period not to exceed nine months. Defendant avers that its individual employees may sustain a maximum total wage loss of not to exceed \$9,000.00 during a period of not to exceed nine months from November 17, 1940, but this defendant within said nine months will absorb back into its service all such employees in the ordinary turnover that results from death, retirement, disability, and resignation. However, the allegations of the complaint in regard to the amount of wage loss are not relevant or material to the issue here presented.

Defendant admits that many of the employees of Pacific Electric Railway Company have devoted a large portion of their productive lives to the service of Pacific Electric Railway Company and have acquired valuable property rights of seniority in connection with their employment; but in that behalf defendant avers that none of the employees of Pacific Electric Railway Company who have been or will be affected by any reduction of employment have had long or any service with the Pacific Electric Railway Company in excess of two years, and denies that many of said employees, or any of said employees, will be unable to secure other employment in the event of their dismissal by the Pacific Electric Railway Company, or will suffer great or any hardship by reason thereof, or will

become public charges, with the exception of one man who voluntarily discontinued his service and elected to go on relief in lieu thereof.

Defendant denies that uncertainty as to their economic future has subjected labor relations between these employees, or any employees, and the Pacific Electric Railway Company to severe stress, or any stress, which uncertainty or stress have been communicated to other employees, or any employees, of this carrier on other lines not affected by this application, or any lines, and denies that from all of which or anything else impairment of employees' morale has resulted. Defendant denies that all of the above or anything alleged in paragraph 6 of plaintiffs' complaint vitally affects the interests, or at all affects the interests, convenience, or necessity of the public in the premises other than to the extent that the public interest has been benefited and advanced by the substitution of a modern up to date motor coach service in lieu of the rail passenger service discontinued.

V

Answering paragraph 7 of plaintiffs' complaint, defendant alleges that the part of Paragraph 20 of Section 1 of the Interstate Commerce Act there quoted, read in connection with other provisions of the law, particularly the provisions of Paragraph 18 of Section 1 in regard to abandonments, is self-explanatory, and denies that the Interstate Commerce Commission is directed by or has any authority under such statute to consider or impose conditions or requirements respecting employees in an abandonment proceeding in determining and deciding whether or not the authorization of such abandonment is permitted by the present or future public convenience and necessity.

VI

78. Defendant admits all of the allegations of paragraph 9 of plaintiffs' complaint, except that defendant denies that the conclusion of the Interstate Commerce Commission was erroneous, and denies that the language of the Interstate Commerce Act gives to the Interstate Commerce Commission any authority to impose conditions for the protection of employees such as those suggested by the plaintiffs in abandonment cases, or to give any consideration to the effect of abandonment upon employees.

VII

Answering paragraph 10 of plaintiffs' complaint, defendant denies that the ruling and decision quoted and referred to of defendant Interstate Commerce Commission is erroneous, or that the order and certificate based therein are likewise erroneous, or that they should be set aside.

VIII

Answering paragraph 11 of plaintiffs' complaint, defendant denies that said ruling and decision of the defendant Interstate Commerce Commission, or any decision thereof, will deprive the plaintiffs, or any thereof, or the employees of the Pacific Electric Railway Company, or any thereof, of the enjoyment of valuable or any property rights in their employment as set forth in the complaint. Defendant denies that the order of the defendant Interstate Commerce Commission referred to in the complaint, or any order of said Interstate Commerce Commission, denies to the plaintiffs, or any thereof, or to said employees, or any thereof, the enjoyment of this right, or any right, by holding that in no case, or under no circumstances can the effect of the abandonment of railroad trackage upon employees be considered in relation to the convenience and necessity of the public.

IX

Answering paragraph 12 of plaintiffs' complaint, defendant denies that plaintiffs, or any thereof, or the employees of the Pacific Electric Railway Company, or any thereof, represented by plaintiffs, or any employees of Pacific Electric Railway Company are threatened with irreparable injury, or any injury, on account of the order of the Interstate Commerce Commission in that they are subject to the loss of position, compensation, rights of seniority or other property rights, or anything else, or at all, if the rail lines mentioned in the application of the Pacific Electric Railway Company are abandoned; and defendant denies that in this proceeding they were denied all opportunity, or any opportunity, to present the effect of their loss in relation to the public convenience and necessity. Defendant denies that for this alleged injury the plaintiffs or those represented by them have no remedy save by this action. Defendant denies that the plaintiffs or those represented by them have no remedy at law in the premises by action for damages or otherwise, or no other remedy whatsoever save by complaint to this Court.

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Exhibit A

PACIFIC ELECTRIC RAILWAY COMPANY

EXHIBIT OF NET INCOME AND OPERATING STATISTICS, YEARS 1925 TO 1939 INCLUSIVE

	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929	1928	1927	1926	1925
RAILWAY OPERATING REVENUES															
Passenger:															
Railway	\$5,217,848	\$5,454,410	\$5,855,963	\$5,804,737	\$5,469,820	\$5,188,894	\$5,265,414	\$5,251,000	\$7,930,779	\$9,285,409	\$10,259,799	\$10,377,873	\$11,133,542	\$11,380,630	\$11,714,930
Motor Coach	2,042,619	1,740,646	1,717,669	1,442,397	1,188,771	1,091,072	1,048,403	1,117,926	1,279,621	1,403,788	1,373,179	1,165,789	1,033,067	943,764	877,415
Freight	2,741,306	2,603,445	2,860,156	2,808,754	2,329,995	1,979,473	2,027,040	2,315,592	2,990,844	3,798,485	5,332,015	5,396,004	6,029,595	5,795,491	5,947,157
Mail	83,339	83,664	87,973	84,028	82,454	84,966	89,062	97,396	101,330	102,660	98,140	94,013	90,580	89,840	78,290
Express	159,833	170,690	161,009	148,287	138,464	124,533	103,964	106,253	188,178	245,859	268,537	250,359	255,889	236,582	227,995
Switching	135,714	103,061	116,331	99,493	79,073	70,003	56,555	54,587	71,836	84,050	184,363	204,457	302,777	264,895	207,158
Other Transportation	19,542	16,318	18,091	35,845	55,150	25,310	21,221	29,232	21,809	30,328	47,222	20,322	21,346	24,138	13,414
Revenue from Other Railway Operations	895,261	889,245	831,717	443,617	436,888	400,450	451,131	561,660	697,222	765,781	854,080	742,171	747,745	375,824	447,996
Total Railway Operating Revenues	\$11,295,462	\$11,061,479	\$11,648,939	\$10,957,158	\$9,780,615	\$9,004,701	\$9,062,840	\$10,533,655	\$13,281,619	\$15,692,300	\$18,417,335	\$18,310,988	\$19,614,541	\$19,111,164	\$19,514,325
OPERATING EXPENSES															
Way and structures	\$1,175,057	\$1,257,485	\$1,411,996	\$1,111,392	\$957,391	\$915,488	\$846,700	\$1,089,434	\$1,551,475	\$2,024,773	\$2,654,780	\$2,988,208	\$3,105,504	\$3,110,063	\$2,710,630
Equipment	1,316,470	1,253,901	1,311,925	1,321,966	1,112,670	1,051,316	995,998	1,238,247	1,576,194	1,911,588	2,142,904	2,278,480	2,432,535	2,478,478	2,245,130
Power	1,032,493	1,000,940	1,171,249	1,157,568	1,097,176	1,099,346	1,221,095	1,217,740	1,431,400	1,599,523	1,687,990	1,716,621	1,624,350	1,785,631	1,761,778
Conducting transportation	3,008,236	4,937,447	4,943,373	4,263,269	3,983,908	3,526,718	3,446,299	3,913,324	4,871,213	5,551,737	5,949,951	6,051,506	6,107,019	6,078,708	6,131,491
Traffic	141,678	138,173	180,229	220,462	171,102	181,070	169,407	41,557	235,202	285,430	266,618	301,057	221,305	203,429	259,066
General and miscellaneous	2,033,387	2,023,942	2,145,195	2,094,795	2,063,868	2,064,655	1,966,951	2,101,006	2,394,732	2,676,871	2,839,299	2,983,307	2,897,901	2,797,221	2,929,233
Transportation for investment - Credit	2,008	7,442	8,272	7,439	3,873	4,479	6,662	1,810	9,010	21,008	42,222	63,228	47,159	40,879	58,684
Total Railway Operating Expenses	\$10,704,703	\$10,674,446	\$11,168,695	\$10,132,043	\$9,382,242	\$8,833,514	\$8,639,788	\$9,909,188	\$12,051,266	\$13,998,914	\$15,499,320	\$15,876,041	\$16,351,455	\$16,404,651	\$15,976,044
Net Revenue from Railway Operations	\$590,759	\$387,033	\$480,244	\$825,115	\$398,373	\$171,187	\$423,052	\$594,467	\$1,230,353	\$1,693,446	\$2,918,015	\$2,434,947	\$3,263,086	\$2,706,511	\$3,538,281
Taxes assignable to Railway Operations	\$1,199,748	\$1,213,538	\$1,168,306	\$842,858	\$900,889	\$494,998	\$580,037	\$685,621	\$938,165	\$1,082,934	\$1,112,611	\$1,138,742	\$1,113,665	\$1,143,352	\$1,184,699
Net Railway Operating Income	\$908,989	\$826,505	\$687,962	\$17,743	\$292,16	\$325,111	\$156,985	\$121,154	\$292,188	\$610,512	\$1,805,404	\$1,296,205	\$2,149,421	\$1,563,161	\$2,353,582
Nonoperating Income	138,381	126,876	261,116	316,074	225,15	159,146	193,196	197,125	220,898	331,485	376,658	394,522	243,797	381,788	539,355
Gross Income	\$470,008	\$990,629	\$426,846	\$298,331	\$22,499	\$164,665	\$350,501	\$75,971	\$513,059	\$941,997	\$2,182,062	\$1,690,727	\$2,393,218	\$1,944,949	\$2,892,937
Deductions from Gross Income:															
Interest on funded debt	\$2,389,462	\$2,403,363	\$2,416,905	\$2,441,883	\$2,439,041	\$2,449,035	\$2,468,670	\$2,484,607	\$2,564,621	\$2,632,699	\$2,638,121	\$2,648,287	\$2,692,565	\$2,704,393	\$2,712,701
Amortization of discount on funded debt		81,448	81,501	81,621	81,610	81,554	82,205	82,530	83,620	83,793	83,793	83,793	83,793	83,793	83,793
Other Deductions	58,864	63,944	57,130	59,332	64,271	84,068	100,028	106,379	119,302	175,357	175,708	198,548	213,564	252,706	320,858
Total Deductions from Gross Income	\$2,448,126	\$2,548,755	\$2,555,536	\$2,582,836	\$2,584,922	\$2,614,657	\$2,650,903	\$2,673,516	\$2,767,543	\$2,911,819	\$2,907,622	\$2,930,628	\$2,980,922	\$3,040,982	\$3,117,352
Net Income (Black) or Loss (Red)	\$2,918,734	\$3,248,384	\$2,982,382	\$2,284,505	\$2,562,423	\$2,779,322	\$2,614,402	\$2,597,545	\$2,254,487	\$1,969,822	\$715,360	\$1,249,901	\$596,704	\$1,096,033	\$221,415

NOTE: - Operating revenues, operating expenses, and taxes include operations of motor coaches by the Pacific Electric Railway as well as one-half the operations of the Los Angeles Motor Coach Company.
 Traffic expenses include net receipts from parks, resorts, and attractions.
 Operating revenues and operating expenses for years 1927 to 1938 include all revenues and expenses of Pacific Electric Building

in Los Angeles for those years; operating expenses for years 1925 and 1926 include expenses of space occupied by P. E.; and non-operating income for years 1925 and 1926 includes rentals and expenses of rented space. The change in 1927 was made on instructions from the Interstate Commerce Commission.
 Prepared by Accounting Department, Los Angeles, February 28, 1940.

Wherefore, Defendant in intervention, Pacific Electric Railway Company, prays that the plaintiffs take nothing by their action, and that this action be dismissed.

FRANK KARR,
C. M. CORNELL,

670 Pacific Electric Building,
Los Angeles, California,

J. R. BELL,

205 Transportation Building, Washington, D. C.,

Attorneys for Defendant in Intervention,
Pacific Electric Railway Company.

80 [Duly sworn to by L. A. Lovell; jurat omitted in
printing.]

82 In the District Court of the United States
for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

Motion for leave to amend complaint

Filed Dec. 2, 1940

Come now plaintiffs in this action and request leave of Court to amend the complaint herein by striking out paragraph Second of the prayer thereof and by substituting therefor the following paragraph:

Second. That upon final hearing the Court suspend and set aside the aforesaid order of the defendant Interstate Commerce Commission:

FRANK L. MULLHOLLAND,
Frank L. Mullholland,
CLARENCE W. MULLHOLLAND,
Clarence W. Mullholland,
WILLARD H. McEWEN,
Willard H. McEwen,
EDWARD C. KRIZ,
Edward C. Kriz,

Counsel for plaintiffs.

DECEMBER 2, 1940.

No objection to amendment.

S. R. BRITTINGHAM, Jr.

S. R. Brittingham, Jr.,

Special Assistant to the Attorney General,

Counsel for United States.

E. M. REIDY,

E. M. Reidy,

Assistant Chief Counsel,

Counsel for Interstate Commerce Commission.

58 UNITED STATES VS. RAILWAY LABOR EXECUTIVES ASS'N

83 In the District Court of the United States for the
District of Columbia

[Title omitted.]

[File endorsement omitted.]

Order granting leave to amend complaint

Filed Dec. 2, 1940

Upon consideration of plaintiffs' Motion for Leave to Amend Complaint in this action, it appearing to the Court that the requested amendment is proper and that it is consented to in writing by the defendants, it is hereby

Ordered, that the complaint herein be amended by striking out paragraph Second of the prayer thereof and by substituting therefor the following paragraph:

Second. That upon final hearing the Court suspend and set aside the aforesaid order of the defendant Interstate Commerce Commission.

D. LAWRENCE GRONER,
D. Lawrence Groner,

*Chief Justice, United States
Court of Appeals for the District of Columbia.*

FRED M. VINSON,
Fred M. Vinson,

*Associate Justice, United States,
Court of Appeals for the District of Columbia.*

ALFRED A. WHEAT,
Alfred A. Wheat,

*Chief Justice, United States District
for District of Columbia.*

DECEMBER 2, 1940.

84 In District Court of the United States for the
District of Columbia

Civil Action No. 9011

[File endorsement omitted.]

RAILWAY LABOR EXECUTIVES' ASSOCIATION AND BROTHERHOOD OF
RAILROAD TRAINMEN, PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE
COMMISSION, DEFENDANTS

(Decided March 6, 1941)

Before GRONER, C. J., VINSON, J., and WHEAT, D. J., sitting as a
statutory three-judge court

Opinion

Filed March 6, 1941

GRONER, C. J.: Pacific Electric Railway Company owns and operates electric railroads and motor bus and truck lines in and near the City of Los Angeles, California. It is a wholly owned subsidiary of Southern Pacific Railroad Company, with the lines of which it connects at numerous points. Southern owns all of its capital stock and a substantial portion of its bonds. The companies are operated separately in both interstate and intra-state commerce. In November 1939 Pacific applied to the Interstate Commerce Commission for a certificate of public convenience and necessity, authorizing it to abandon certain of its lines of railroad in Los Angeles, Orange, and Riverside Counties, California. The application involved approximately 90 miles of trackage. The plan contemplated the abandonment of certain rail lines, the rehabilitation of others, and the substitution of motor bus and motor truck service as a means "of increasing operating revenues, reducing expenses, and rendering a more adequate service to the public." The Commission accepted jurisdiction, and the railway brotherhoods, who are plaintiffs in this action, were permitted to intervene to protect the interests of Pacific's employees. After a hearing in March, 1940, Division 4 issued an order granting Pacific's application in principal part. The Division refused, however, any conditions for the protection of displaced employees, on the ground that the Commission had

no authority to do this under the applicable provisions of the Interstate Commerce Act.¹ * Reargument before the full Commission, requested by the brotherhoods, was denied; whereupon this action was begun.

Questions of venue are waived, and the jurisdiction of this court is conceded under 28 U. S. C. 41 (28) et seq.

The question is whether the order, to the extent that it denies the requested conditions for want of power to impose them, is erroneous in law. Admittedly, we have power to annul or
85 suspend an order of the Commission in whole or in part.
28 U. S. C. § 41 (28). The answer requires—for reasons which follow—a comparison of two sections of the Interstate Commerce Act.

Section 1 (18)² forbids a carrier by railroad to acquire new lines or to extend its own lines without obtaining a certificate of public convenience and necessity from the Commission, and likewise forbids a carrier to abandon all or any portion of any line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. Section 1 (20)³ authorizes the Commission to issue the certificate and to attach thereto "such terms and conditions" as in its judgment the public convenience and necessity may require.

Section 5, as amended in 1920, provided for the adoption of a general plan for the consolidation of the country's railroads into a limited number of systems and required, inter alia, the Commission's approval of any consolidation or lease of railroad facilities. Sections 5 (4) (b)⁴ authorized the Commission, if it found that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation will be in harmony with and in furtherance of the adopted general plan and "will promote the public interest," to give its approval, "upon the terms" and conditions and with the modifications so found to be just and reasonable". This section was rewritten in 1940⁵ and there is no longer any requirement that particular transactions shall be in harmony with any general plan. Only the previous language is pertinent here, however, because of analogies arising out of its interpretation by the Supreme Court in *United States v. Lowden*, 308 U. S. 225.

The important difference in the language used by Congress in the respective sections is that in the abandonment section the Commission was and is authorized to issue the certificate if the public convenience and necessity permit, and to impose such terms and conditions as the public convenience and necessity require.

*All notes on pages 67-68.

whereas under the consolidation section the certificate issued only if the proposal was in harmony with the general plan of consolidations and would promote the public interest. Upon such a finding, the Commission might apply just and reasonable conditions. In neither section had there been any specific authorization to include in the required terms any provision for compensation to employees affected by the change in structure or operation of the railroad, but the Commission construed the consolidation section as granting such authority and the abandonment section as denying it. Plaintiffs insist that the congressional language does not warrant this difference of construction.

In Chicago G. W. R. Co. Trackage, 207 I. C. C. 315, 321 (a proceeding under the abandonment section), the Commission said:

"It will be noted that the power to attach terms and conditions to certificates is restricted to such as may be required by the public convenience and necessity. In Wisconsin Telephone Co. v. Railroad Commission, 162 Wis. 383, 'Public convenience and necessity' was defined as 'A strong or urgent public need.' Public-Convenience Application of Utah Terminal Ry., 72 I. C. C. 89.

"In the present case the conditions sought (provision for payment of wages, etc.) have no relation to the public convenience and necessity; they are offered for the purpose of maintaining a private benefit, the benefit of continued employment. From the standpoint of effect this case is similar to cases involving the abandonment of lines of railroad with resulting unemployment.

We have consistently held that the effect of abandonment upon employment cannot be controlling in the disposition of such cases. To hold otherwise would place us in the position of attempting to insure employment to the personnel of carriers whether or not the affected employees were needed."

Then, referring to its earlier report in St. Paul Bridge and Terminal Railway Co. Control, 199 I. C. C. 588, a proceeding in consolidation, the Commission said:

"The present proceeding differs from that one in that it is brought under the provisions of section 1 (18-20). Our power to impose conditions is stated in different terms in the two sections. Whatever may be the extent of our right to attach conditions in section 5 (4) proceedings we are of the view that under section 1 (20) the terms and conditions we may attach must be such as in our judgment public convenience and necessity require. We may not properly borrow from section 5 (4) and read into section 1 (20) the power to impose such terms and conditions as we may find to be just and reasonable. Our sympathy for employees and full realization of the hardship that may and often

does result to them in the administration of the abandonment and other provisions of section 1 (18-20) do not enlarge our statutory power or enable us to attach any conditions except those required by public convenience and necessity."

In the St. Paul Bridge case, the Commission had said the term public interest as used in the consolidation section was broad enough to comprehend every public interest and the interest of every group or element of the public, and accordingly had held it applicable to the welfare of employees. And this view was adhered to and followed in *Associated Railways*, 228 I. C. C. 277, 335-6, in *Louisiana & Arkansas Railway Co.*, 230 I. C. C. 156, 164, in *Chicago Rock Island & Gulf*, 230 I. C. C. 181, 186-7, and again on rehearing, 233 I. C. C. 21. The order in the last mentioned case, to the extent that it imposed the conditions, was set aside by a three-judge District Court. *Lowden v. United States*, 29 F. Supp. 9. On appeal, the Supreme Court reversed. *United States v. Lowden*, 308 U. S. 225. Mr. Justice Stone, who wrote the opinion, upheld the exercise of power, not on the ground, relied on by the Commission, that the term was broad enough to include every public interest, including that of the employees, but on the narrower ground that the welfare of the dismissed employees was a part of the public interest in the adequacy of a public transportation system. Referring to *New York Central Securities Corp. v. United States*, 287 U. S. 12, and to *Texas v. United States*, 292 U. S. 522, where it was held that public interest "is not a mere general reference to public welfare" but "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities," he said the single question is whether:

"the granting or withholding of the protection afforded to the employees by the prescribed conditions can have no influence or effect upon the maintenance of an adequate and efficient transportation system which the statute recognizes as a matter of public concern."

Then, holding that it had such relation, he said:

"In the light of this record of practical experience and Congressional legislation (in relation to railway labor), we cannot say that the just and reasonable conditions imposed on appeal-
 37 lees in this case will not promote the public interest in its statutory meaning by facilitating the national policy of railroad consolidation; that it will not tend to prevent interruption of interstate commerce through labor disputes growing out of labor grievances, or that it will not promote that

efficiency of service which common experience teaches is advanced by the just and reasonable treatment of those who serve."

The effect of this decision is to approve definitely the attitude of the Commission in consolidation cases and to set at rest any existing doubt of the Commission's discretionary power in such cases, under the then existing provisions of the Act, to impose terms with relation to displaced employees. The analogy to abandonment cases is apparent if the applicable language of Section 1 (20) is considered, equally with that in 5 (4), as intended to apply to and be consistent with the congressional plan for the development and maintenance of an adequate railroad system. And this, we think, is as true as can be. Section 1 (18-20) is not, it should be remembered, confined solely to abandonment cases. It applies as well to extensions of lines, construction of new lines, and the acquisition or operation of "any line of railroad, or extension thereof." In any of these respects it would hardly be contended that the section had no relation to the maintenance of an adequate railway system. Indeed, that it has such relation has been expressly decided by the Supreme Court. For example, in *West Pacif. v. So. Pac.*, 284 U. S. 47, 50, the Court said: "Paragraphs 18 to 22 (of Sec. 1) were considered here in *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U. S. 266, and were declared to be a part of the general plan by which Congress intended to promote development and maintenance of adequate railroad facilities." And see *Texas, etc. R. R. v. Northside Ry.*, 276 U. S. 475, 479, and also *Ches. & Ohio Ry. v. U. S.*, 283 U. S. 35, 42, to the same effect.

While it is quite true these cases dealt with construction of new track and not with abandonment, the statutory test is the same. And from this it follows that the question, in the latter class, is necessarily whether the public interest in an adequate system of railways permits the proposed abandonment. This was recognized in the opinion of Mr. Justice Brandeis in *Colorado v. U. S.*, 271 U. S. 153, 168. There he said "The sole test prescribed is that abandonment be consistent with public necessity and convenience. In determining whether it is, the Commission must have regard to the needs of both intrastate and interstate commerce. For it was a purpose of Transportation Act, 1920, to establish and maintain adequate service for both." And this brings us, we think, inevitably to the conclusion that the phrase "Public convenience and necessity" was intended to have substantially the same meaning as the phrase "public interest" in § 5 (4); and that the Commission's authority to "attach to the issuance of the certificate (of abandonment) such terms

and conditions as in its judgment the public convenience and necessity may require" likewise embraces as a factor for consideration the displacement of employees with its consequences on efficiency of the transportation system. In this view, the provisions of § 1 (18-20) can only be read in the light of the Supreme Court's interpretation of § 5 (4) (b) in the Lowden case, p. 236, viz:

"The now extensive history of legislation regulating the relations of railroad employees and employers plainly evidences the awareness of Congress that just and reasonable treatment of railroad employees is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but that it promotes efficiency, which suffers through loss of employee morale when the demands of justice are ignored."

88 The Commission, however, insists that the case cannot be thus disposed of. After the Lowden decision, it adhered to its original views and declined to apply the analogy we think exists between the two sections. The Commission says it is at least not so clear as to avoid the duty to endeavor to construe the different sections so as to give effect to what the Commission thinks was the plain intention of Congress in the enactment of the respective sections. The argument to this point is that the Commission for five years prior to 1940 had consistently taken the position that it had no authority to impose conditions for the benefit of labor in abandonment cases and called the attention of Congress to its position in this regard, and with this knowledge Congress in the Transportation Act of 1940, in rewriting essential parts of the Act and in conferring added authority on the Commission in various respects, refrained from making any change in Section 1 (18-20). But the rule that reenactment of a statute after it has been construed by officers charged with its enforcement impliedly adopts the construction, applies only when the construction is not plainly erroneous. *U. S. v. Missouri P. R. Co.*, 278 U. S. 269. "The persuasion that lies behind" that doctrine is merely one factor in a total effort to give fair meaning to language." *F. C. C. v. Columbia Broadcasting System*, 311 U. S. —. For, as was said by the Supreme Court in *United States v. Stewart*, 311 U. S. 60, 69, the interpretation of the meaning of each phrase must be closely related to the time and circumstances of its use. Here the phrases found in the two sections of the Act were written in 1920. As we have pointed out, there is nothing in the 1920 Act itself or in its legislative history which indicates that Congress had in mind either in the case of consolidation or of abandonment the protection

of displaced employees. But in the Lowden case the Supreme Court found in the language of the consolidation section what appeared to it to be a clear implication that Congress, to maintain an adequate and efficient railway system, intended to provide—in the discretion of the Commission—for dismissed employees. And this question being settled, and the phrase used in the abandonment section being, as we think, directed to the same end, it is difficult, if not impossible, to deny it a similar implication. In this view, it may very well be considered that in the amendment of the consolidation section in 1940 and the failure to amend the abandonment section Congress merely intended to make the conditions mandatory in the former and leave them simply discretionary in the latter.

At our request counsel have filed supplemental briefs on the significance of the legislative history of S. 2009, which culminated in the Transportation Act of 1940. It appears that a few comments were made in debate, and some discussion, none too clear, was had in the committee hearings, upon the protection of employees in abandonment cases. Later a bill was introduced to require the Commission in abandonment cases to impose conditions prohibiting the displacement of employees. This bill apparently never came to a vote. These discussions resulted only in the enactment of a provision requiring a "fair and equitable arrangement" to protect employees in consolidation cases and other more specific provisions therefor.* All the proposals leading to this result similarly dealt with mandatory provisions. We think this legislative history, therefore, can throw little light on the extent of the discretionary authority since 1920 to impose conditions under § 1 (20). Indeed, we think the interpretations so clear that resort to such extraneous matters is unnecessary.

In the Lowden case, it was argued that the effect of the amendment to § 5 as it appeared in the bill then pending in Congress was to create authority to provide for benefits to labor in consolidation cases because none had existed before. But the Supreme Court rejected this idea, saying "Doubts which the Commission at one time entertained but later resolved in favor of its authority to impose the conditions, were followed by the recommendations of the Committee of Six that fair and equitable arrangements for the protection of employees be 'required.'" It

89 was, said the Supreme Court, this recommendation which was embodied in the new legislation, and the Court added "We think the only effect of this action was to give legislative emphasis to a policy and a practice already recognized by Section 5 (4) (b) by making the practice mandatory instead

of discretionary, as it had been under the earlier act." And there is a logical reason for this, for admittedly there were in 1920 as also in 1940 two objects sought through the consolidation section—one, to secure an efficient transportation service; the other, the incidental but inevitable financial benefits to the railroads involved. For the result of consolidation, it was expected, would strengthen their ability to operate and to earn a profit and would relieve them from the financial debilitation under which they had labored for many years. Time has demonstrated the reliability of this belief, and what was in 1920 left discretionary had become in 1940 an acknowledged right. To share with displaced personnel a part of the gain was then and now a necessary factor in the accomplishment of an efficient rail system. In the case of abandonment, the primary object of the statute is the same, namely, the preservation of an efficient transportation service, which it is easily understandable might be defeated by excessive expenditures from the common fund in the local interest, so as to impair the ability of the carrier properly to serve interstate commerce. *Colorado v. U. S.*, supra. at p. 163, 167. But in the case of an abandonment proceeding the second objective—protection of displaced personnel—might be either unfair or impractical and should not, therefore, be mandatory. If the object of the abandonment is to cut off the dead limb of a railway or if it is the total abandonment of a small system, as was true in the case of the Arlington & Fairfax Railway, as to which we had a part,⁹ it conceivably might be wholly unreasonable to add to the burden the further loss in requiring financial support of employees no longer needed. But if, on the other hand, the abandonment like consolidation tends to increase the earnings of the corporate applicant by avoiding unnecessary duplication of service or, as in this case, where the abandonment means not a withdrawal of transportation service from a particular area, but the substitution of bus for rail service and the general rearrangement of the properties and operations of the company, as the result of which both stockholders and the public will benefit, it is difficult to recognize any distinction between such a case and one of consolidation, except that the proceedings in the one case are required to be under Section 1 (18-20) and the other under Section 5 (4) (b).

In this view, we are of opinion that it is not permissible to lean too strongly on either the refusal of the Commission for several years to assume the authority which we think it had or the omission of Congress in the recent passage of the Transportation Act to provide it. While it is true the Commission under Section

5 was acting in accordance with a general plan of consolidation which Congress then had in view, it is also true that under Section 1 (20) it acts in accordance with the general policy of that plan, and if that policy includes the protection of employee morale with all its implications in the one case, it seems to us it necessarily must include it equally in the other.

We are, therefore, of opinion that the general rule of interpretation of an ambiguous statute, invoked by the Commission, is not applicable for the reason that, since the decision in the Lowden case, the language of Section 1 (20) is no longer doubtful but is plain, and thus considered with Section 5 (4) (b), harmonizes with the whole Act to the end intended by Congress in its passage. That part of the Commission's report which denies consideration of the employees' petition for lack of power will be set aside, with directions to the Commission to consider the petition and take such action thereon as in the discretion of the Commission is proper.

D. LAWRENCE GRONER, *C. J.*

FRED M. VINSON,

ALFRED A. WHEAT.

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NOTES

¹ Interstate Commerce Act, § 1 (18-20). 49 U. S. C. § 1 (18-20).

² After ninety days after this paragraph takes effect no carrier by railroad subject to this part shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this part over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment. 49 U. S. C. § 1 (18).

³ The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both. 49 U. S. C. § 1 (20).

⁴ Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under subdivision (a), the carrier or carriers or corporation seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers, and the applicant or applicants, of the time and place for a public hearing. If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition

68 UNITED STATES VS. RAILWAY LABOR EXECUTIVES ASS'N

of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable. 41 Stat. 482, 48 Stat. 217.

91 *Transportation Act of 1940, § 7, — Stat. —

*The Chicago G. W. Ry. Trackage case was followed subsequently in—Delaware River Ferry Abandonment, 212 I. C. C. 580; Colorado & Southern Abandonment, 217 I. C. C. 366, 381; Pooling of Ore Traffic, 219 I. C. C. 285, 294; Chicago, Rock Island Abandonment, 230 I. C. C. 341, 347; Copper River Abandonment, 233 I. C. C. 109, 113; Gulf, Texas Abandonment, 233 I. C. C. 321, 331; Quincy, Omaha Abandonment, 233 I. C. C. 471, 486; Chicago, Springfield Abandonment, 236 I. C. C. 765, 772; Chicago, Milwaukee Abandonment, — I. C. C. —

*Chicago, Springfield Abandonment, 236 I. C. C. 765, 772; Chicago, Milwaukee Abandonment, — I. C. C. —

*§ 5 (2) (f) as amended in § 7 of the Transportation Act of 1940, — Stat. —
*Arlington & Fairfax Auto R. Co. v. Capital Transit Co., 71 App. D. C. 53, 109 F. 2d 345.

92 In the District Court of the United States
for the District of Columbia

[File endorsement omitted.]

Civil Action No. 9011

RAILWAY LABOR EXECUTIVES' ASSOCIATION ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA ET AL., DEFENDANTS

Final order

Filed April 2, 1941

Upon consideration of the Amended Complaint heretofore filed herein on behalf of the Railway Labor Executives' Association et al., the Answer filed on behalf of defendant, the United States of America, and of defendant, the Interstate Commerce Commission, and the Answer of Defendant in Intervention, the Pacific Electric Railway Company, and the exhibits annexed to said Complaint, Answers, and Answer of Defendant in Intervention, and the matter having been argued by counsel for the respective parties in open Court, it is, by the Court, this 2 day of April, 1941:

Ordered, that such part of the report of the Interstate Commerce Commission, decided August 28th, 1940, in cause Finance Docket No. 12643, "Pacific Railway Company Abandonment" which denies consideration of the employees' petition for lack of power to entertain the same be, and the same is hereby set aside. And it is further

Ordered, that the defendant, the Interstate Commerce Commission, consider said petition and take such action thereon as in

the discretion of said Interstate Commerce Commission, shall be just and proper.

D. LAWRENCE GRONER,
D. Lawrence Groner,
FRED M. VINSON,
Fred M. Vinson,
ALFRED A. WHEAT,
Alfred A. Wheat,

Judges.

Approved as to form:

E. M. REIDY,

E. M. Reidy,

Assistant Chief Counsel,

Counsel for Interstate Commerce Commission.

S. R. BRITTINGHAM, Jr.,

S. R. Brittingham, Jr.,

Special Assistant to the Attorney General,

Counsel for United States.

J. R. BELL,

J. R. Bell,

*Counsel for Defendant in Intervention,
Pacific Electric Railway Company.*

94 In the District Court of the United States
for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

Petition for appeal

Filed May 20, 1941

The United States of America, the Interstate Commerce Commission, and the Pacific Electric Railway Company, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree of the District Court of the United States for the District of Columbia, entered in said Court on April 2, 1941, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors, accompanying this petition and to which reference is hereby made.

95 Said defendants pray that a transcript of record, proceedings and papers on which said decree was made and

70 UNITED STATES VS. RAILWAY LABOR EXECUTIVES ASS'N

entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 19, 1941.

S. R. BRITTINGHAM, Jr.,
Special Asst. to Atty. Gen.,

FRANCIS BIDDLE,
*Solicitor General,
For the United States.*

DANIEL W. KNOWLTON,
Chief Counsel,

E. M. REIDY,
Assistant Chief Counsel,

For Interstate Commerce Commission.

FRANK KARR,

J. R. BELL,

For Pacific Electric Railway Company.

96 In District Court of the United States for the
District of Columbia

[Title omitted.]

[File endorsement omitted.]

Assignment of errors

Filed May 20, 1941

Now come the United States of America, the Interstate Commerce Commission, and the Pacific Electric Railway Company, defendants in the above-entitled cause, by their respective counsel and in connection with their appeal, file the following assignment of errors upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this court entered April 2, 1941.

The District Court erred:

(1) In holding that the Interstate Commerce Commission has authority, in abandonment cases, under the applicable provisions of the Interstate Commerce Act to impose conditions for the protection of displaced employees;

97 (2) In holding that because the Supreme Court of the United States held, in *United States v. Lowden*, 308 U. S. 225, that the Commission had authority to impose conditions for the protection of labor in consolidation cases, it has the same authority under the abandonment provisions of the Act;

(3) In holding that the language used by Congress in the abandonment section (1 (18-20)) is entitled to the same inter-

pretation as was given to the language in the consolidation section by the Supreme Court in *United States v. Lowden*, 308 U. S. 225;

(4) In holding that the legislative history of S. 2009, which culminated in the Transportation Act of 1940, "can throw little light on the extent of the discretionary authority since 1920 to impose conditions under section 1 (20)" and that the interpretation of section 1 (20) is so clear that resort to such extraneous matters is unnecessary;

(5) In failing to give weight to the fact that the Commission has consistently ruled, since the insertion in the Interstate Commerce Act of the provisions of section 1 (18-20) in the Transportation Act of 1920, that it has no authority in abandonment cases to impose conditions for the protection of employees affected by abandonments;

(6) In failing to give weight to the legislative history of the Transportation Act of 1940 showing that the question of affording protection to labor in abandonment cases was called to the attention of Congress, and Congress specifically refrained from giving the Commission such authority;

98 (7) In entering its final decree of April 2, 1941, setting aside that part of the Commission's report denying consideration of the employees' petition for lack of power, and in directing the Commission to consider said petition and take further action thereon, and

(8) In not dismissing the bill of complaint, as amended, at plaintiffs' costs.

Dated May 19, 1941.

FRANCIS BIDDLE,

Solicitor General,

S. R. BRITTINGHAM, Jr.,

Special Asst. to Attorney General,

For the United States.

DANIEL W. KNOWLTON,

Chief Counsel,

E. M. REIDY,

Assistant Chief Counsel,

For the Interstate Commerce Commission.

FRANK KARR,

J. R. BELL,

For Pacific Electric Ry. Co.

116 In the District Court of the United States
For the District of Columbia

[Title omitted.]

Order allowing appeal

Filed May 20, 1941

In the above-entitled cause, the United States of America, the Interstate Commerce Commission, and the Pacific Electric Railway Company, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered April 2, 1941, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided, it is

117 — Ordered and decreed that the appeal be, and the same is hereby, allowed as prayed for.

Dated May 19, 1941.

D. LAWRENCE GRONER,

Chief Justice,

Court of Appeals for the District of Columbia.

FRED M. VINSON,

Associate Justice,

Court of Appeals for the District of Columbia.

ALFRED A. WHEAT,

Chief Justice,

*District Court of the United States
for the District of Columbia.*

120 In the District Court of the United States
for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

Notice of appeal

Filed May 20, 1941

To the Commissioners of the District of Columbia:

You are hereby notified that the District Court of the United States for the District of Columbia on May 19, 1941, filed and

entered an order allowing an appeal by the above-named defendants to the Supreme Court of the United States from a decree filed and entered on the 2nd day of April, 1941, in the above-entitled cause, and that the citation signed by such Court on May 19, 1941, in connection with the order allowing such appeal, is made returnable within forty days from the date of the signing of such citation.

121 Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendants' assignments of errors, defendants' jurisdictional statement pursuant to Rule 12 of the revised rules of the Supreme Court of the United States, and the statement required to be served upon appellees by said Rule 12.

This notice is given to you pursuant to the provisions of the U. S. Code, Title 28, sec. 47a, Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

Dated May 19, 1941.

FRANCIS BIDDLE,
Solicitor General,

S. R. BRITTINGHAM, JR.,
Special Asst. to Atty. General
For the United States.

DANIEL W. KNOWLTON,
Chief Counsel,

E. M. REIDY,
Assistant Chief Counsel,
For the Interstate Commerce Commission.

FRANK KARR,

J. R. BELL,

For Pacific Electric Railway Company.

122 Service of a copy of the foregoing notice and attachments is hereby acknowledged this 20th day of May, 1941.

Corporation Counsel, District of Columbia,

By RICHMOND B. KEECH.

H.

123 [Citation in usual form showing service on Frank L. Mulholland, filed May 20, 1941, omitted in printing.]

128 In the District Court of the United States for the District
of Columbia

[File endorsement omitted.]

[Title omitted.]

Praeceptum for Transcript of Record

Filed May 20, 1941

To the Clerk of the above-named Court:

You are hereby requested to prepare a transcript of the record in the above-entitled cause to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript the following, to wit:

(1) Bill of complaint and Exhibits A, B, and C thereto, filed November 8, 1940;

(2) Summons served upon the United States of America and the Interstate Commerce Commission, together with acknowledgments of service thereof;

129 (3) Order of Chief Justice, requesting designation of Justices to hear the above-entitled cause dated November 12, 1940;

(4) Order dated November 14, 1940, covering a three-judge court;

(5) Notice from the Clerk of the Court of Appeals for the District of Columbia as to time and place of hearing, dated November 14, 1940;

(6) Answer of United States, filed November 18, 1940;

(7) Answer of Interstate Commerce Commission filed November 25, 1940;

(8) Order of Chief Justice Groner, dated March 15, 1941, permitting intervention of Pacific Electric Railway Company;

(9) Answer of defendant in intervention, Pacific Electric Railway Company, filed November 25, 1940, together with exhibit thereto attached;

(10) Motion of plaintiffs-appellees to amend bill of complaint, and consent thereto, filed December 2, 1940;

(11) Order of court dated December 2, 1940, granting leave to amend bill of complaint;

(12) Amendment to bill of complaint of December 2, 1940;

- (13) Opinion of D. Lawrence Groner, Chief Justice, Court of Appeals for the District of Columbia, decided March 6, 1941;
 (14) Final decree, entered April 2, 1941;
 (15) Defendants' petition for appeal;
 (16) Defendants' assignment of errors and prayer for reversal;
 (17) Defendants' jurisdictional statement under Rule 12 of the Revised Rules of the Supreme Court of the United States;
 130 (18) Order allowing appeal;
 (19) Notice of appeal and acknowledgment of service;
 (20) Notice to Commissioners of the District of Columbia;
 (21) Citation on appeal;
 (22) Statement of jurisdiction of Supreme Court, together with notice and acknowledgment of service;
 (23) Rules 12 (2), Rules of Supreme Court, statement; and
 (24) Praecipe for transcript of record. Said transcript is to be prepared as required by law and the rules of this Court and by the rules of the Supreme Court of the United States.

Dated May 19, 1941.

FRANCIS BIDDLE,
Solicitor General,
 S. R. BRITTINGHAM, JR.,
Special Asst. to Atty. General,
For the United States.

DANIEL W. KNOWLTON,
Chief Counsel,
 E. M. REIDY,
Assistant Chief Counsel,
For the Interstate Commerce Commission.

FRANK KARR;
 J. R. BELL,
For Pacific Electric Railway Company.

- 131 Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 20 day of May, 1941.

FRANK L. MULHOLLAND
 (Mulholland, Robie & McEwen),
 EDWARD C. KRIZ,
Attorneys for Plaintiffs-Appellees.

- 132 [Clerk's Certificate to foregoing transcript omitted in printing.]

133 In the Supreme Court of the United States

Statement of points to be relied upon and designation of the
record to be printed

Filed June 28, 1941

Come now the appellants and say that they will rely on points made in their assignment of errors in brief and oral argument before this Court on their appeal in the above-entitled cause.

Appellants further state that the entire record in this cause as filed in this Court pursuant to praecipe for transcript of record is necessary for consideration of the points set forth above.

FRANCIS BIDDLE,
Solicitor General,

THURMAN ARNOLD,
Assistant Attorney General,

S. R. BRITTINGHAM, JR.
*Special Assistant to the Attorney General,
For the United States.*

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DANIEL W. KNOWLTON,
Chief Counsel,

E. M. REIDY,
*Assistant Chief Counsel,
For the Interstate Commerce Commission.*

FRANK KARR,
J. R. BELL,
For the Pacific Electric Railway Company.

Service of a copy of this "Statement of Points to be Relied upon and Designation of the Record to be Printed" is acknowledged this 27th day of June, 1941.

FRANK L. MULHOLLAND,
EDWARD C. KRIZ;
*Railway Labor Executives Association
and Brotherhood of Railroad Trainmen, Appellees.*

[File endorsement omitted.]

[Endorsement on cover:] File No. 45,551. District of Columbia, D. C. U. S., Term No. 223. The United States of America, Interstate Commerce Commission, and The Pacific Electric Railway Company, Appellants, *vs.* Railway Labor Executives Association and Brotherhood of Railroad Trainmen. Filed June 28, 1941. Term No. 223 O. T. 1941.